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Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 20, at 9 a.m.
WHERE: National Archives and Records Administration, Room 410, 8th and Pennsylvania Avenue NW., Washington, DC.
RESERVATIONS: Robert D. Fox, 202-523-5239.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 584]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 584 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 268,500 cartons during the period October 25 through October 31, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 584 (§ 910.884) is effective for the period October 25 through October 31, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on October 20, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 11 to 1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for large sized lemons, fair for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.884 is added to read as follows:

§ 910.884 Lemon Regulation 584.

The quantity of lemons grown in California and Arizona which may be handled during the period October 25 through October 31, 1987, is established at 268,500 cartons.

Dated: October 21, 1987.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-24748 Filed 10-22-87; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1030

[Docket No. AO-361-A25]

Milk in the Chicago Regional Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the order regulating the handling of milk in the Chicago Regional marketing area based on industry proposals considered at a public hearing held at Madison, Wisconsin, on June 2-4, 1987. The amended order establishes transfer credits on movements of milk from pool plants to distributing plants for Class I use. One credit, the transportation credit, reimburses distributing plant handlers from marketwide pool funds up to .28 cents/cwt./mile on such transfer milk. The other credit, the assembly credit, provides an 8-cent per cwt. pool reimbursement to pool plant handlers who assemble milk for transfer to bottling plants. These changes are authorized by the Agricultural Marketing Agreement Act of 1937 as amended by the Food Security Act of 1985, which provides for marketwide service payment programs, and are

necessary to reflect current marketing conditions and maintain orderly marketing conditions. Cooperative associations representing more than the required two-thirds of the producers supplying milk for the market have approved the issuance of the amended order.

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Emergency Partial Decision: Issued October 8, 1987; published October 15, 1987 (52 FR 38235).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is in accordance with the Food Security Improvements Act of 1986 (Section 9 of Pub. L. 99-260, 100 Stat. 51, Mar. 20, 1986) to make this order amending the order effective not later than November 1, 1987.

The provisions of this order are known to handlers. The decision of the Secretary containing all amendment provisions of this order was issued October 8, 1987 (52 FR 38235). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective November 1, 1987, and that a statutory deadline precludes delay of the effective date of this order for 30 days after its publication in the **Federal Register.** (sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for CFR Part 1030 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 1030.52, paragraph (b) is revised to read as follows:

§ 1030.52 Plant location adjustment for handlers.

* * * * *

(b) For the purpose of this section and §§ 1030.55 and 1030.75, the distances to be computed shall be on the basis of the shortest highway mileage as determined by the market administrator—with fractions rounded up to the next whole mile.

(1) The market administrator shall notify each handler of the zone or mileage determination from the city hall in Chicago for each plant and for each handler's pool distributing plant the mileage to each transferor pool plant.

(2) Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

* * * * *

(3) A new § 1030.55 is added to read as follows:

§ 1030.55 Transfer credits on Class I milk.

(a) For each handler who operates a pool distributing plant (or plants) a transportation credit on milk received from each other pool plant shall be computed by the market administrator as follows, except that paragraph (a)(2) of this section shall not apply when the Class I milk price adjusted for location pursuant to § 1030.52(a) is higher at the transferor plant than at the transferee plant:

(1) Multiply the number of hundredweights of the quantities of milk subject to the computations pursuant to § 1030.52(c) (9) and (10) times the product of 0.28 cents times the number of miles between the transferor plant and the transferee plant; and

(2) Subtract an amount computed by multiplying the absolute value difference between the location

adjustment rates specified in § 1030.52(a) applicable at the transferee and transferor plants times the hundredweights of milk used in the computation in paragraph (a)(1) of this section. If the amount computed pursuant to this paragraph is greater than the amount computed in paragraph (a)(1) of this section the transportation credit will be zero.

(b) For each handler who transfers milk from a pool plant to a pool distributing plant (or plants) and assembly credit shall be computed by the market administrator at the rate of 8 cents per hundredweight of such handler's transfers of milk included in the computations pursuant to § 1030.52(c)(9) and (10).

(4) In § 1030.60, change the reference "§ 1033.44 (a)(9)" in paragraph (c) to "§ 1030.44(a)(9)"; delete the word "and" at the end of paragraph (f); at the end of paragraph (g) change the period to a semicolon and add the word "and"; and add a new paragraph (h) to read as follows:

§ 1030.60 Handler's value of milk for computing uniform price.

* * * * *

(h) Subtract an amount equal to any credits applicable pursuant to § 1030.55.

Signed at Washington, DC, on: October 20, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 87-24557 Filed 10-22-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 50 and 77

[Docket No. 87-114]

Bovine Tuberculosis and Bison

AGENCY: Animal and Plant Health Inspection Sevice, USDA.

ACTION: Final rule.

SUMMARY: We are amending the indemnity and interstate movement regulations related to bovine tuberculosis so that the regulations applying to cattle also apply to bison. This action increases the number of bison owners eligible to receive Federal indemnity for bison destroyed because of tuberculosis and restricts the interstate movement of bison that are exposed, reactors, or suspects or from herds containing suspects. These actions are necessary to help eradicate bovine tuberculosis in the United States.

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Program Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782, 301-436-5961.

SUPPLEMENTARY INFORMATION:

Background

We published in the **Federal Register** on June 29, 1987 (52 FR 24165-24168, Docket Number 86-002), a proposal to amend the indemnity and interstate movement regulations related to bovine tuberculosis in 9 CFR Parts 50 and 77 so that the regulations applying to cattle also apply to bison.

We proposed to exclude the District of Columbia and the territories (except the Virgin Islands) of the United States from our lists of accredited-free states, modified accredited areas, and nonmodified accredited areas until we can determine their bovine tuberculosis status.

We also proposed to replace the terms "modified accredited areas" and "nonmodified accredited areas" in Part 77 with "modified accredited states" and "nonmodified accredited states," respectively.

Miscellaneous

We proposed to amend the regulations in Part 77 to update the incorporation by reference of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

We proposed to make several nonsubstantive editorial changes to clarify the regulations.

Comments on the proposed rule were required to be postmarked or received on or before July 29, 1987. We received 104 comments, all of which supported the proposed rule. Most of the comments were from members of the American Buffalo Association, Inc.

Based on the rationale set forth in the proposal, we are adopting the proposed rule as a final rule except as explained below.

On September 23, 1986, an interim rule was published in the **Federal Register** (51 FR 33733-33736, Docket Number 85-131) which, among other things, amended § 77.9(b). This amendment inadvertently removed a portion of § 77.9(b). This final rule corrects this error. In addition, minor, nonsubstantive changes have been made.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, most owners of bison affected with or exposed to tuberculosis lack adequate financial incentives to free their herds from the disease. Because only bison associated with the June 1984 outbreak of tuberculosis in South Dakota are covered by our tuberculosis indemnity regulations, most bison owners are liable for all losses they incur in controlling or eradicating tuberculosis in their herds. In addition, bison affected with tuberculosis have no salvage value.

This rule will increase the number of owners eligible to receive federal indemnity for bison destroyed because of tuberculosis. To receive the indemnity, owners must obtain an appraisal for each bison to be destroyed, have the bison destroyed, and clean and disinfect contaminated premises. Although owners will have some expenses in connection with these requirements, they will be entitled to federal indemnity for each bison destroyed in accordance with the regulations in Part 50, as amended by this final rule. The benefits to bison owners will far outweigh the costs. Furthermore, we do not expect this action to significantly increase the cost of the tuberculosis indemnity program because our experience indicates that less than one percent of the bison in the United States will be condemned because of tuberculosis.

This rule will require states to apply the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" to bison in the same manner as to cattle to qualify as an accredited-free state or a modified accredited state. However, these provisions will place no burden on individual herd owners.

This rule will continue to allow most bison to be moved interstate without restriction. It restricts the interstate movement only of bison from nonmodified accredited states and bison that are exposed, reactors, or suspects or from herds containing suspects. At

present, there are no nonmodified accredited states, and less than 1 percent of the bison in the United States are exposed, reactors, or suspects or from herds that contain suspects.

Removing the District of Columbia and the territories (except the Virgin Islands) of the United States from the lists in Part 77 of accredited-free states, modified accredited states, and nonmodified accredited states will not affect the requirements for interstate movement of cattle or bison from the District of Columbia or these territories.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been assigned OMB control numbers 0579–0001, 0579–0051, and 0579–0084.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Tuberculosis.

9 CFR Part 77

Animal diseases, Bison, Cattle, Incorporation by reference, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR Parts 50 and 77 as follows:

PART 50—BOVINE TUBERCULOSIS INDEMNITY

1. The authority citation for Part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. The heading for Part 50 is revised to read "PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS".

§ 50.1 Definitions.

3. In § 50.1(e), "Representative" is revised to read "representative".

4. In § 50.1(g), "Veterinarian" is revised to read "veterinarian".

5. In § 50.1(j), "cattle" is revised to read "cattle, bison, or swine".

6. In § 50.1(m), "or bison" is added after "cattle"; and "animals (of like kind)", every time the phrase appears, is revised to read "cattle or bison, or both,".

7. In § 50.1(n), "Depopulation" is revised to read "depopulation", and "and bison" is added after "cattle".

8. In § 50.1(o), " 'Registered Cattle': Cattle" is revised to read " 'Registered cattle or bison': Cattle or bison".

9. In § 50.1(p), "cattle" is revised to read "cattle, bison, or swine".

10. In § 50.1(q), "of cattle" is removed.

11. In § 50.1, all paragraph designations are removed, and the definitions are arranged in alphabetical order.

§ 50.2 Cooperation with states.

12. In § 50.2, "cattle" is revised to read "cattle, bison, or swine".

§ 50.3 Payment to owners for animals destroyed.

13. In § 50.3(a), the heading is revised to read *"Affected cattle and bison"*, and, in the body of the paragraph, "and bison" is added after "cattle".

14. In § 50.3(b), the heading is revised to read *"Herd depopulation—cattle and bison"*, and, in the body of the paragraph, "and bison" is added after "cattle" every time the word appears.

15. In § 50.3(c), the heading is revised to read *"Exposed cattle and bison"*; and, in the body of the paragraph, "and bison" is added after "cattle" the first time the word appears, and "or bison" is added after "cattle" the second and third time the word appears.

16. In § 50.3(d), "of cattle" is removed.

17. In § 50.3, paragraph (e) is removed.

§ 50.4 Determination of existence of or exposure to tuberculosis.

18. In § 50.4(a), "and bison" is added after "Cattle".

19. In § 50.4(b), "and bison" is added after "Cattle" and after "cattle".

§ 50.5 Record of tests.

20. In § 50.5, "any animal in a herd of cattle" is revised to read "any cattle or bison in a herd".

§ 50.6 Identification of animals to be destroyed because of tuberculosis.

21. In § 50.6(a), the heading is revised to read *"Reactor cattle and bison"*, and, in the body of the paragraph, "and bison" is added after "cattle".

22. In § 50.6(b), the heading is revised to read *"Exposed cattle and bison"*, and, in the body of the paragraph, "and bison" is added after "cattle".

§ 50.7 Destruction of animals.

23. A parenthetical phrase is added at the end of § 50.7 to read as follows:

(Approved by the Office of Management and Budget under control number 0579–0051)

§ 50.8 Payment of expenses for transportation and disposal of carcasses of affected animals.

24. In § 50.8, "and bison" is added after "cattle" every time the word appears.

§ 50.9 Appraisals.

25. In § 50.9, "or bison" is added after "cattle".

§ 50.10 Report of appraisals.

26. In § 50.10, "and bison" is added after "cattle".

§ 50.11 Report of salvage proceeds.

27. In § 50.11, "or bison" is added after "cattle" every time the word appears.

§ 50.12 Claims for indemnity.

28. In § 50.12, "or bison" is added after "cattle" every time the word appears.

§ 50.13 Disinfection of premises, conveyances, and materials.

29. In § 50.13, "or bison" is added after "cattle".

§ 50.14 Claims not allowed.

30. In § 50.14, in the introductory text, "or bison" is added after "cattle".

31. In § 50.14(b), "and bison" is added after "cattle" every time the word appears.

32. In § 50.14(d), "or bison" is added after "cattle" the first and third time the word appears, and "and bison" is added after "cattle" the second time the word appears.

33. In § 50.14(e), "or bison" is added after "cattle".

§ 50.15 Part 53 of this chapter not applicable.

34. In § 50.15 "or bison" is added after "cattle".

PART 77—TUBERCULOSIS IN CATTLE

35. The authority citation for Part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

36. The heading for Part 77 is revised to read "PART 77—TUBERCULOSIS", and the subpart designations and headings are removed.

§ 77.1 Definitions.

37. In § 77.1, paragraph (b) is removed.

38. In § 77.1(c), "of cattle" is removed.

39. In § 77.1, paragraph (d) and footnote 1 are revised to read as follows:

(d) *"Uniform Methods and Rules—Bovine Tuberculosis Eradication."* Uniform methods and rules for eradicating bovine tuberculosis in the United States, adopted by the United States Animal Health Association on October 24, 1984, and approved by Veterinary Services on March 13, 1985. The "Uniform Methods and Rules—Bovine Tuberculosis Eradication" were approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.[1]

40. In § 77.1, paragraphs (e), (f), (g), and (h) are revised to read as follows:

* * * * *

(e) *Official tuberculin test.* Any test for tuberculosis conducted on cattle in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The official tuberculin test for bison is the same as for cattle.

(f) *Negative cattle and bison.* Cattle are classified negative for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on the results of an official tuberculin test. Bison are classified negative for tuberculosis in the same manner as cattle.

(g) *Suspect cattle and bison.* Cattle are classified as suspects for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on a positive response to an official tuberculin test. Bison are classified as suspects for tuberculosis in the same manner as cattle.

(h) *Reactor cattle and bison.* Cattle are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on a positive response to an official tuberculin test. Bison are classified as reactors for tuberculosis in the same manner as cattle.

* * * * *

41. In § 77.1(i), "or bison, or both," is added after "cattle" the first two times the word appears, and "or bison" is added after "cattle" the third time the word appears.

42. In § 77.1(j), "of cattle" is removed, and "such cattle" is revised to read "cattle or bison".

43. In § 77.1(k), *"and bison"* is added after *Cattle"* in the heading; and, in the body of the paragraph, "and bison" is added after "cattle" the first time the word appears, and "or bison" is added after "cattle" the second time the word appears.

44. In § 77.1(l), *"and bison"* is added after *"cattle"* in the heading, and, in the body of the paragraph, "and bison" is added after "cattle" every time the word appears.

45. In § 77.1, paragraphs (w), (x), (y), and (z) are revised to read as follows:

* * * * *

(w) *Modified accredited state.* (1)(i) To establish or maintain status as a modified accredited state, a state must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited states, and must apply these provisions to bison in the same manner as to cattle. Modified accredited state status must be renewed annually.

(ii) To qualify for renewal of modified accredited state status, a state must submit an annual report to Veterinary Services certifying that the state complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited states and that the state applies these provisions to bison in the same manner as to cattle. The report must be submitted to Veterinary Services each year between October 1 and November 30.

(2) Modified accredited states: Alabama, Arkansas, California, Florida, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Ohio, Oregon, Puerto Rico, Tennessee, Texas, Virginia, and Washington.

(x) *Nonmodified accredited state.* (1) A state that has not received accredited-free state status or modified accredited state status. (2) Nonmodified accredited states: [No states]

(y) *Accredited-free state.* (1)(i) To establish or maintain status as an accredited-free state, a state must have no findings or tuberculosis in any cattle or bison in the state for at least 5 years. The state also must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free states and must apply these provisions to bison in the same manner as to cattle. Detection of tuberculosis in any cattle or bison in the state will result in suspension of accredited-free state status. Detection of tuberculosis in two or more herds in the state within 48 months will result in revocation of accredited-free state status. Accredited-free state status must be renewed annually.

(ii) To qualify for renewal of accredited-free state status, a state must submit an annual report to Veterinary Services certifying that the state complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free states and that the state applies these provisions to bison in the same manner as to cattle. The report must be submitted to Veterinary Services each year between October 1 and November 30.

(2) Accredited-free states: Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, the Virgin Islands of the United States, West Virginia, Wisconsin, and Wyoming.

(z) *Accredited herd.* To establish or maintain accredited herd status, the herd owner must comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited herds and must apply the provisions to bison in the same manner as to cattle. All cattle and bison in a herd must be free from tuberculosis.

* * * * *

46. In § 77.1(aa), "or bison" is added after "cattle".

47. In § 77.1(bb), "or bison" is added after "cattle", and "§§ 77.9 and 77.10" is revised to read "§§ 77.5 and 77.6 of this part".

48. In § 77.1, all paragraph designations are removed, the definitions are arranged in alphabetical order, and a parenthetical phrase is added at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 0579-0084)

49. Section 77.2 is revised to read as follows:

§ 77.2 General restrictions.

Cattle and bison may not be moved interstate except in compliance with this part.

§§ 77.3, 77.4, 77.5 and 77.6 [Removed]

§§ 77.7, 77.8, 77.9 and 77.10 [Redesignated as 77.3, 77.4, 77.5 and 77.6]

50. Sections 77.3, 77.4, 77.5, and 77.6 are removed, and §§ 77.7, 77.8, 77.9, and 77.10 are redesignated as §§ 77.3, 77.4, 77.5, and 77.6, respectively.

[1] Copies of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" may be obtained from the Program Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

§ 77.3 [Amended]

51. In redesignated § 77.3, "*areas*" is revised to read "*states*" in the section heading; and, in the text, "or bison" is added after "cattle", and "area" is revised to read "state".

§ 77.4 Movement from nonmodified accredited states.

52. In redesignated § 77.4, "*areas*" is revised to read "*states*" in the section heading; and, in the introductory test, "or bison" is added after "cattle", and "area" is revised to read "state".

53. In redesignated § 77.4(a), "or bison" is added after "cattle" every time the word appears.

54. In redesignated § 77.4(b), "or bison" is added after "cattle" very time the word appears.

55. In redesignated § 77.4(c), "or bison" is added after "cattle".

56. In redesignated § 77.5, the heading is revised to read "*Interstate movement of cattle and bison that are exposed, reactors, or suspects or from herds containing suspects.*"

57. In redesignated § 77.5(a), "*and bison*" is added after "*cattle*" in the heading, and, in the body of the paragraph, "or bison" is added after "Cattle" and "cattle".

58. In redesignated § 77.5 (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5), "or bison" is added after "cattle" every time the word appears.

59. In redesignated § 77.5(a)(4), "77.9(a)(5)" is revised to read "77.5(a)(5)".

60. Redesignated § 77.5(b), introductory text, is revised to read as follows:

§ 77.5 [Amended]

* * * * *

(b) *Exposed cattle and bison.* Except for the movement of exposed cattle to a quarantined feedlot in accordance with § 50.16 of this chapter, exposed cattle or exposed bison shall be moved interstate only if they are moved directly to slaughter to an establishment operating in accordance with the Federal Meat Inspection Act (21 U.S.C. 601–695) or to a state inspected slaughtering establishment which has inspection by a state inspector at the time of slaughter and only in accordance with the following conditions:

* * * * *

61. In redesignated § 77.5 (b)(1) and (b)(2), "or bison" is added after "cattle" every time the word appears.

62. In redesignated § 77.5(c), "*and bison*" is added after "*cattle*" in the heading, and, in the body of the paragraph, "or bison" is added after "cattle" every time the word appears.

63. A parenthetical phrase is added to the end of redesignated § 77.5 to read as follows:

(Approved by the Office of Management and Budget under control number 0579–0051)

§ 77.6 Other movements.

64. In redesignated § 77.6, "or bison" is added after "cattle" in the first sentence of this section, and the last two sentences of the section (beginning with "The revision of the regulations") are removed.

Done in Washington, DC, this 19th day of October, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87–24558 Filed 10–22–87; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 92

[Docket No. 87–128]

Restrictions on Importation of Horses from Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations by including Spain among the countries in which Veterinary Services considers African horse sickness to exist. Because African horse sickness is a fatal disease not found in the United States, we require horses from African horse sickness-affected countries to undergo a 60-day quarantine at the port of New York. As a result of the change in the disease status of Spain, horses intended for importation from Spain must now undergo the 60-day quarantine required of all horses from African horse sickness-affected countries.

DATES: Interim rule effective October 23, 1987. Consideration will be given only to comments postmarked or received on or before December 22, 1987.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Specifically refer to Docket No. 87–128. You may review comments at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 restrict the importation of horses that could introduce various diseases into the United States. The regulation in § 92.11(d)(ii) (referred to below as the regulation) requires horses intended for importation from Africa, including horses that have stopped in or transited a country in Africa, to undergo a 60-day quarantine in the port of New York.

Until the veterinary authorities of Spain reported that they had confirmed an outbreak of African horse sickness on September 14, 1987, Veterinary Services considered that disease to exist only on the continent of Africa. For that reason, § 92.11(d)(ii) restricted importation of horses coming from Africa, without referring to African horse sickness. This restriction, requiring the horses in question to undergo a 60-day quarantine at the port of New York was intended to prevent the introduction of African horse sickness, a fatal equine viral disease, into the United States.

To present this regulation more clearly, we are making it explicit that our quarantine is intended for horses from countries where we consider African horse sickness to exist. Until the recent outbreak of this disease in Spain, the indecision of the regulation, which referred to the continent of Africa but not to the disease we considered to be contained within that continent, had no practical consequences. Now, however, the opportunity for clarification presents itself, since we are including Spain among the countries from which horses must undergo a 60-day quarantine at the port of New York. More precisely, the horses undergo quarantine at the New York Animal Import Center, Veterinary Services' quarantine facility at the port of New York, located in Newburgh, New York.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a

significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

We are continuing to allow U.S. importers to import horses from Spain, although we are requiring these horses to enter through the port of New York. All horses from countries where we consider African horse sickness to exist must enter through the port of New York and undergo a 60-day quarantine at the New York Animal Import Center. Because African horse sickness has spread to Spain, importers of horses from Spain must comply with the regulation in § 92.11(d)(1)(ii) to prevent the introduction of African horse sickness into the United States.

While importers of horses from Spain, accustomed to paying 3-day quarantine costs, will incur additional costs because of the 60-day quarantine, we do not expect this to have a significant economic impact on a substantial number of small entities. Only a small number of horses are imported from Spain; our figures indicate an average of 20 per year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. Donald L. Houston, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exits, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent horses with African horse sickness from introducing it into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of those comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.11 [Amended]

2. In § 92.11, paragraph (d)(1)(ii) is amended to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(d) * * *

(1) * * *

(ii) Horses intended for importation from Spain and all countries on the continent of Africa, countries Veterinary Services considers to be affected with African horse sickness, must enter the United States only at the port of New York, and be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days. This restriction also applies to horses that have stopped in or transited a country considered affected with African horse sickness.

* * * * *

Done in Washington, DC, this 19th day of October 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-24559 Filed 10-22-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 015CE, Special Conditions No. 23-ACE-14A]

Special Conditions; Petersen Aviation, Inc., Modified Beech Model 55 Series, Model 58 Series, and Model 95( )55 Series Airplanes to Incorporate ADI System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; amendment to Special Conditions No. 23–ACE–14.

SUMMARY: This special condition amendment is issued to become part of the type certification basis for Beech Aircraft Corporation Model 55 Series, Model 58 Series, and Model 95( )55 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. Special conditions were issued August 25, 1986 (51 FR 30206), to provide the additional safety standards the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes. This amendment adds a requirement inadvertently omitted from the previously issued special conditions.

EFFECTIVE DATE: October 23, 1987.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1985, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Beech Model 95( )55 Series

Airplanes. This installation incorporates ADI tanks, pumps, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas).

The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

The Administrator made a finding that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the proposed system.

Special conditions for the certification of the ADI system were proposed in Notice No. 23-ACE-14, published in the **Federal Register** on June 13, 1986. The closing date for comments was July 14, 1986. No comments were received. The special conditions were adopted as proposed on August 8, 1986, and published in the **Federal Register** on August 25, 1986 (51 FR 30206) to be effective September 24, 1986.

Subsequent certification activity revealed that one special condition paragraph previously coordinated between the FAA and the applicant had inadvertently been omitted from the special conditions package. The purpose of this adoption is to correct that omission.

Type Certification Basis

The certification basis (TC 3A16) for the Beech Aircraft Corporation Model 95( )55 Series, Model 55 Series, and Model 58 Series Airplanes is Part 3 of the Civil Air Regulations as amended to May 15, 1956, and § 23.1385(c), 23.1387(a) and 23.1387(e) of Federal Aviation Regulations, Part 23, dated February 1, 1965, as amended by Amendment 23-12; Equivalent Safety Findings: CAR sections 3.663 and 3.757 for Models 95-B55 and 95-B55A (S/N TC-2003 and up), Models E55 and E55A (S/N TE-1084 and up), Models 58 and 58A (S/N TH-773 and up); CAR section 3.387 for Models 95-B55 and 95-B55A (all serials); Models E55 and E55A (all serials), and Models 58 and 58A (all serials), and Part 36 through Amendment 36-10 of the Federal Aviation Regulations for Models 95-B55 (S/N TC-2285 and after), for Models E55 (S/N TEI-1171 and after) and for Model 58 (S/N TH-1090 and after), Special Conditions No. 23-ACE-14, and the special conditions amendment adopted by this rulemaking action.

Discussion

The FAA received no comments in response to Notice No. 23-ACE-14A published in the **Federal Register** on July 24, 1987. The closing date for comments was August 24, 1987.

Conclusion

This action affects only the Beech Model 55 Series, Model 58 Series, and Model 95( )55 Series Airplanes incorporating ADI systems. It is not a rule of general applicability and applies only to the series and model of airplane identified in these amended final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, and Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions Amendment

In consideration of the foregoing, the following special conditions amendment is issued as part of the type certification basis for Beech Model 55 Series, Model 58 Series, and Model 95( )55 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System, as follows:

A new paragraph (k) is added to Special Condition 2 of Special Conditions No. 23-ACE-14 to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition—"

Issued in Kansas City, Missouri, on September 25, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-24526 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-15]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of one Federal airway located in the vicinity of New York. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-226 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston MA; New York, NY, Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-213, V-222, V-223, V-226 and V-229 located in the vicinity of New York (52 FR 26493). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a nose-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway

modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey State government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees that there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider this suggestion.

Comments from the Department of the Navy and the Department of the Air Force objected to the routing of an airway through R-5202 and R-4105 and through certain military operations areas. Of the five victor airways objected to by the Navy and Air Force, only V-34 (ASD 87-AWA-9) is being implemented and V-34 does not penetrate any special use airspace.

Due to technical and administrative problems that surfaced in this docket, only V-226 will be implemented at this time. Implementation of the other four airways will be delayed until a later date. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of one VOR Federal airway located in the vicinity of New York. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-226 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the need for concurrent implementation of this rule with related airway actions on the east coast, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-226 [Amended]

By removing the words "Stillwater, NJ; INT Stillwater 110° and Sparta, NJ, 194° radials." and substituting the words "to Stillwater, NJ."

Issued in Washington, DC, on October 9, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24528 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-16]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of two Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-232 and V-252 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-232, V-249, V-252, V-268 and V-270 located in the vicinity of New York (52 FR 26494). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environment assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more thna a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only V-232 and V-252 will be implemented at this time. Implementation of the other three airways will be delayed until a later date. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of two VOR Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-232 and V-252 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the need for concurrent implementation of this rule with related airway actions on the east coast, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-232 [Amended]

By removing the words "Broadway, NJ; INT of Broadway 112° and LaGuardia, NY, 209° radials; to LaGuardia." and substituting the words "INT Milton 099° and Solberg, NJ, 299° radials; Solberg; INT Solberg 137° and Colts Necks, NJ, 263° radials; to Colts Neck."

V-252 [Amended]

By removing the words "to Robbinsville." and substituting the words "Robbinsville; to DuPont, DE."

Issued in Washington, DC, on October 9, 1987.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-24532 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-17]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phrase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of one Federal airway located in the vicinity of New York. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While four airways were included in the notice only V-273 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-273, V-292, V-308 and V-373 located in the vicinity of New York (52 FR 26488). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this should be delayed pending the outcome of the review. With respect to the studies conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby

saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Comments from the Department of the Navy and the Department of the Air Force objected to the routing of an airway through R-5202 and R-4105 and through certain military operations areas. Of the five victor airways objected to by the Navy and Air Force, only V-34 (ASD 87-AWA-9) is being implemented and V-34 does not penetrate any special use airspace.

Due to technical and administrative problems that surfaced in this docket, only V-273 will be implemented at this time. Implementation of the other three airways will be delayed until a later date. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of one VOR Federal airway located in the vicinity of New York. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While four airway were included in the notice only V-273 will be implemented at this due to technical and administrative problems. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast carridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the need for concurrent implementation of this rule with related airway actions on the east coast, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

71.123 [Amended]

2. Section 71.123 is amended as follows:

V-273 [Revised]

From INT Huguenot, NY 134° and Solberg, NJ, 044° radials; Huguenot; INT Huguenot 303° and Hancock, NY, 148° radials; Hancock; Georgetown, NY; 6 miles wide, Syracuse, NY.

Issued in Washington, DC, on October 9, 1987.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-24530 Filed 10-22-87; 8:45 am]

BILING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-18]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of four Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-374, V-405, V-419 and V-423 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC. 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-374, V-405, V-408, V-419 and V-423 located in the vicinity of New York (52 FR 26495). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air

routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignement of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only V-374, V-405, V-419 and V-423 will be implemented at this time. Implementation of the other airway will be delayed until a later date. With respect to V-405 the segment between Pottstown, PA and Carmel, NY, will be published, and V-419 the segment between Carmel, NY, and Sparta, NJ, will be published. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of four Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-374, V-405, V-419 and V-423 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the need for concurrent implementation of this rule with related airway actions on the east coast, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-374 [Amended]

By removing the words "Madison." and substituting the words "to Madison."

V-405 [Revised]

From INT Pottstown, PA, 222° and Baltimore, MD, 034° radials; Pottstown; INT Pottstown 050° and Solberg, NJ, 264° radials; Solberg; INT Solberg 044° and Carmel, NY, 243° radials; to Carmel.

V-419 [Amended]

By removing the words "From Carmel, NY; INT Carmel 232° and Sparta, NJ, 082° radials;" and substituting the words "From Carmel, NY; INT Carmel 243° and Sparta, NJ, 082° radials;"

V-423 [Amended]

By removing the words "INT Ithaca 357° and Syracuse, NY, 210° radials; Syracuse." and substituting the words "to Syracuse, NY."

Issued in Washington, DC, on October 9, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24533 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-19]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of one Federal airway located in the vicinity of New York. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While six airways were included in the notice only V-474 will be implemented at this time due to technical and administrative problems. This amendment is part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-431, V-433, V-451, V-457 and V-474 and revoke V-467 located in the vicinity of New York (52 FR 26496). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey State government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to consitute a complication of routing. Should unforeseen problems arise as a result to this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only V-474 will be implemented at this time. Implementation of the other five airways will be delayed until a later date. With respect to V-474, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of one of six VOR Federal airways located in the vicinity of New York that was published in the notice.

This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the need for concurrent implementation of this rule with related airway actions on the east coast, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-474 [Amended]

By removing the words "Modena: INT Modena 095° and Woodstown, NJ, 043° radials." and substituting the words "to Modena."

Issued in Washington, DC, On October 9, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24531 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-20]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of one Federal airway located in the vicinity of New York. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While six airways were included in the notice only V-489 will be implemented at this time due to technical and administrative problems. This amendment is part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-475, V-476, V-483, V-487, V-489 and add V-615 located in the vicinity of New York (52 FR 26497). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey State government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic

impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrutment departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in depature/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen probelms arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and adminstrative problems only V–489 will be implemented at this time. Implementation of the other five airways will be delayed until a later date. With respect to V–489, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment of Part 71 of the Federal Aviation Regulations alters the description of one of six VOR Federal airways located in the vicinity of New York that was published in the notice. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the need for concurrent implementation of this rule with related airway actions on the east coast, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–489 [Amended]

By removing the words "From Sparta, NJ; INT Sparta 023° and Albany, NY, 192° radials; Albany," and substituting the words "From INT Sparta, NJ, 300° and Huguenot, NY 196° radials; Huguenot; INT Huguenot 008° and Albany, NY, 209° radials; Albany;"

Issued in Washington, DC, on October 9, 1987.

Shelomo Wugalter,

Acting Manger, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87–24529 Filed 10–22–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25418; Amdt. No. 1359]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference.— Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA from documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAP, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on October 16, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 14, 1988*

Tanana, AK—Ralph M. Calhoun Meml, VOR-A, Amdt. 6
Tanana, AK—Ralph M. Calhoun Meml, VOR/DME RWY 6, Orig.
Tanana, AK—Ralph M. Calhoun Meml, NDB-B, Amdt. 3
Windsor Locks, CT—Bradley Intl, ILS RWY 24, Amdt. 3
Lafayette, IN—Purdue University, VOR-A, Amdt. 23
Lafayette, IN—Purdue University, NDB RWY 10, Amdt. 11
Lafayette, IN—Purdue University, ILS RWY 10, Amdt. 9
Lafayette, IN—Purdue University, RNAV RWY 28, Amdt. 3
LaPorte, IN—LaPorte Muni, VOR-A, Amdt. 4
LaPorte, IN—LaPorte Muni, RNAV RWY 20, Amdt. 20
Rensselaer, IN—Jasper County, NDB RWY 18, Amdt. 3
Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 15R, Orig.
Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 27, Orig.
Boston, MA—General Edward Lawrence Logan Intl, VOR-DME RWY 33L, Orig.
Boston, MA—General Edward Lawrence Logan Intl, NDB RWY 4R, Amdt. 22
Boston, MA—General Edward Lawrence Logan Intl, NDB RWY 22L, Amdt. 9
Boston, MA—General Edward Lawrence Logan Intl, ILS RWY 4R, Amdt. 5
Boston, MA—General Edward Lawrence Logan Intl, ILS/DME RWY 15R, Amdt. 10
Boston, MA—General Edward Lawrence Logan Intl, ILS RWY 22L, Amdt. 3
Boston, MA—General Edward Lawrence Logan Intl, ILS/DME RWY 27, Amdt. 2
Boston, MA—General Edward Lawrence Logan Intl, ILS/DME RWY 33L, Amdt. 21
Norwood, MA—Norwood Memorial, LOC RWY 35, Amdt. 5
Norwood, MA—Norwood Memorial, NDB RWY 35, Amdt. 5
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 21L, Amdt. 5
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 21R, Amdt. 23
Detroit, MI—Detroit Metropolitan Wayne County, RADAR-1, Amdt. 19
Concord, NH—Concord Muni, NDB RWY 35, Amdt. 4
Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, VOR RWY 35, Amdt. 14
Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, NDB RWY 35, Amdt. 12
Mitchell, SD—Mitchell Muni, VOR RWY 12, Amdt. 7
Mitchell, SD—Mitchell Muni, VOR RWY 30, Orig.
Amery, WI—Amery Muni, NDB RWY 18, Amdt. 3
Madison, WI—Dane County Regional-Truax Field, VOR/DME or TACAN RWY 13, Amdt. 19

Madison, WI—Dane County Regional-Truax Field, VOR RWY 18, Amdt. 17
Madison, WI—Dane County Regional-Truax Field, VOR/DME or TACAN RWY 31, Amdt. 20
Madison, WI—Dane County Regional-Truax Field, NDB RWY 36, Amdt. 27
Madison, WI—Dane County Regional-Truax Field, ILS RWY 18, Amdt. 5
Madison, WI—Dane County Regional-Truax Field, ILS RWY 36, Amdt. 27
Madison, WI—Dane County Regional-Truax Field, RADAR-1, Amdt. 13
Racine, WI—Horlick-Racine, VOR RWY 4, Amdt. 6
Racine, WI—Horlick-Racine, NDB RWY 4, Amdt. 2
Racine, WI—Horlick-Racine, ILS RWY 4, Amdt. 3

* * * *Effective December 17, 1987*

Mobile, AL—Bates Field, VOR or TACAN RWY 9, Amdt. 24
Mobile, AL—Bates Field, NDB RWY 14, Amdt. 2
Orland, CA—Haigh Field, VOR-A, Amdt. 3
Salinas, CA—Salinas Muni, ILS RWY 31, Amdt. 4
Jacksonville, FL—Jacksonville Intl, LOC RWY 25, Amdt. 5
Waycross, GA—Waycross-Ware County, NDB RWY 18, Amdt. 4
Marion, IL—Williamson County Regional, VOR RWY 2, Amdt. 11
Marion, IL—Williamson County Regional, VOR RWY 20, Amdt. 15
Mattoon-Charleston, IL, Coles County Memorial, ILS RWY 29, Amdt. 5
Jeffersonville, IN—Clark County, VOR RWY 18, Amdt. 1
Richmond, IN—Richmond Muni, VOR RWY 6, Amdt. 10
Richmond, IN—Richmond Muni, VOR RWY 24, Amdt. 10
South St. Paul, MN—South St. Paul Muni-Richard E. Fleming Fld., NDB-B, Amdt. 2
Taos, NM—Taos Muni, VOR/DME-B, Amdt. 2
Taos, NM—Taos Muni, NDB-A, Amdt. 1, *Calcelled*
Taos, NM—Taos Muni, NDB RWY 4, Orig.
Fallon, NV—Fallon Muni, VOR/DME-B, Amdt. 3
Reno, NV—Reno Cannon Intl, LOC-2 RWY 16R, Amdt. 5
New York, NY—LaGuardia, ILS/DME RWY 13, Amdt. 1
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl., VOR RWY 5, Amdt. 10
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, VOR/DME RWY 23, Amdt. 7,
Reidsville, NC—Rockingham County NC Shiloh, VOR/DME-A, Amdt. 6
Southern Pines, NC—Moore County, RNAV RWY 23, Amdt. 1
Pembina, ND—PEMBINA Muni, VOR RWY 33, Amdt. 4
Springfield TN—Springfield Muni, NDB RWY 21, Amdt. 2
Bryce Canyon, UT—Bryce Canyon, VOR-A, Amdt. 5
Gloucester, VA—Francis J. Mellar Field, VOR-A, Amdt. 6, *Cancelled*

* * * *Effective November 19, 1987*

Plymount, MA—Plymouth Muni, NDB RWY 6, Orig.
Schenectady, NY—Schenectady County, ILS RWY 4, Amdt. 2
Philadelphia, PA—Philadelphia Intl, Converging ILS-2 RWY 9R, Orig.
Philadelphia, PA—Philadelphia Intl, Converging ILS-2 RWY 17, Orig.
Houston, TX—Houston Intercontinental, ILS RWY 26, Amdt. 10

* * * *Effective October 2, 1987*

Newport News, VA—Patrick Henry Intl, NDB RWY 7, Amdt. 3
Newport News, VA—Patrick Henry Intl, ILS RWY 7, Amdt. 28

[FR Doc. 87-24527 Filed 10-22-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM81-7-002; Order No. 482]

Exemption from Licensing Requirements of Part I of the Federal Power Act of a Category of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less

Issued: October 20, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) rescinds §§ 4.109 through 4.113 of its regulations (18 CFR 4.109 through 4.113 (1982)). These regulations were promulgated in Order No. 202, a final rule issued in this docket on January 19, 1982. The final rule exempted two categories of hydroelectric power projects from the licensing requirements of the Federal Power Act (FPA), 16 U.S.C. 792 through 828c (1982), subject to certain terms and conditions. The Commission stayed the effectiveness of the final rule in June 1983.

DATE: October 20, 1987.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lynn S. Lichtenstein 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Final Rule

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission is rescinding §§ 4.109 through 4.113 of its regulations (18 CFR 4.109 through 4.113). These regulations were promulgated in Order No. 202, a final rule issued in this docket on January 19, 1982.[1] The final rule, which was appealed to the United States Court of Appeals for the District of Columbia Circuit in *National Wildlife Federation* v. *FERC*,[2] exempted two categories of hydroelectric power projects from the licensing requirements of the Federal Power Act (FPA), 16 U.S.C. 792 through 828c (1982), subject to certain terms and conditions. At the Commission's request, the Court of Appeals for the D.C. Circuit remanded the record to the Commission in May 1983 for further consideration. Pending the outcome of its reconsideration, the Commission stayed the effect of §§ 4.109 through 4.113 of its regulations.[3]

II. Background

Title IV of the Energy Security Act of 1980 (ESA)[4] amends the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2700 and 2708 (1982), to authorize the Commission to exempt certain small hydroelectric power projects on a case-by-case basis, or by class or category of such projects, from all or part of the requirements of Part I of the FPA, including any licensing requirement.

Under section 408 of the ESA, the Commission has the discretion to provide exemptions under certain conditions. First, the proposed installed capacity of a project must not exceed 5 megawatts (MW) and must use the water power potential of an existing dam or a "natural water feature" that does not require the creation of a dam or man-made impoundment. Second, section 408 provides that certain environmental requirements apply to projects that the Commission exempts from licensing. Those requirements include the National Environmental Policy Act of 1969, the Endangered Species Act, and the Fish and Wildlife Coordination Act. Third, the statute

[1] Order No. 202, 47 FR 4232 (January 29, 1982), FERC Stats. & Regs., [Reg. Preambles 1982-1985] ¶ 30,329 (June 19, 1982).

[2] No. 82-2434 (D.C. Cir., filed December 3, 1982).

[3] Order No. 202-C, 48 FR 29474 (June 27, 1983), FERC Stats. & Regs., [Reg. Preambles 1982-1985] ¶ 30,461 (June 15, 1983).

[4] Pub. L. 96-294, 94 Stat. 611.

states that any exemption from licensing will be subject to the consultation provisions in section 30 of the FPA. That section requires the Commission to include in any exemption the terms and conditions prescribed by state and Federal fish and wildlife agencies for the protection of fish and wildlife and other natural resources.

In the final rule issued in Order No. 202, the Commission exercised its discretion under section 408(b) of the ESA to exempt "classes or categories" of projects.[5] The rule established procedures to exempt two categories of small hydroelectric power projects that use existing dams. One category, described in § 4.109(a) of the Commission's regulations, includes projects with a proposed installed generating capacity of more than 100 kilowatts (kW), but not more than 5 MW. Projects in the second category, described in § 4.109(b) of the Commission's regulations, must not exceed 100 kW of proposed installed capacity and are eligible for exemption under slightly different terms and conditions. Under § 4.109(c) of the Commission's regulations, any qualifying project is automatically exempted from licensing 30 days after the Commission receives a brief notice of exemption from licensing.

In the course of the rulemaking proceeding, some commenters argued that fish and wildlife agencies may impose conditions on a project-specific basis under section 30 of the FPA. These commenters contended that the Commission did not have the authority to require that all terms and conditions be included in a generic rule.

In Order No. 202 and in the order on rehearing,[6] the Commission stated that it had complied with the requirements of section 30(c) by providing an opportunity in the rulemaking proceeding for fish and wildlife agencies to recommend terms and conditions for inclusion in the final regulations.[7] The Commission also stated that making exemptions subject to project-specific terms and conditions would be incompatible with a truly categorical approach.[8]

The National Wildlife Federation, New England Rivers Center, and Trout Unlimited, Inc. (NWF) jointly appealed the final regulations to the D.C. Circuit in *National Wildlife Federation* v. *FERC*. NWF argued that the state and Federal fish and wildlife agencies must have the flexibility to consider the environmental impacts of particular projects and establish binding project-specific terms and conditions for the protection of the environment.

On April 18, 1983, the Commission requested by motion that the court remand the final rule to the Commission for further consideration. The court granted the Commission's motion and remanded the record in the case on May 20, 1983, so that the Commission could reconsider the categorical exemption rule. The Commission then issued a stay of the rule on June 15, 1983, and directed exemption applicants to use the case-by-case exemption procedures in §§ 4.101 through 4.108 of the regulations.

The Commission subsequently proposed to rescind the categorical exemption provisions contained in §§ 4.109 through 4.113 of its regulations.[9] In the Notice of Proposed Rulemaking, the Commission explained that its experience indicated fish and wildlife agencies sometimes believed additional, site-specific terms and conditions were necessary for projects applying for exemptions. The Commission stated it would afford these agencies the opportunity to impose project-specific conditions on all exemption applicants. The Commission further explained that the lack of opportunity to comment on or protest an application might also be a disadvantage of the categorical exemption provisions. For example, the Commission might not be informed of property disputes without the opportunity for public comment.

The Commission also expressed its view that revising the categorical exemption procedures, rather than rescinding them would not serve a regulatory purpose. If the Commission were to revise the categorical exemption procedures, it believed it would need to establish procedures similar to the existing case-by-case procedures in order to resolve the fish and wildlife concerns identified by its experience.

III. Discussion

The Commission received five comments concerning the proposal presented in the Notice of Proposed Rulemaking. Four commenters agreed with the Commission's proposal. These commenters argued that the statutory fish and wildlife agencies must be accorded the opportunity to impose terms and conditions on all exemptions.

While no commenter objected to the proposal, one commenter, Utah Power and Light, asked that the existing exemptions granted under the regulations while they were in effect be retained as valid exemptions. The commenter suggested grandfathering these exemptions. The Commission granted these exemptions in 1982 and 1983.[10]

In this rule, the Commission is rescinding certain of its regulations pertaining to exemptions granted under section 405 of PURPA. The Commission's rule rescinding the categorical exemptions is prospective.[11] Therefore, rescinding the regulations does not affect the exemptions that have already been issued. These exemptions remain valid. Therefore, it is not necessary to issue grandfathering provisions concerning these exemptions.

IV. Regulatory Flexibility Act Certification.

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 through 612 (1982), requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that, if promulgated, will have a "significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a proposed rule will not have such an impact. As stated previously in the Notice of Proposed Rulemaking, the Commission believes that the final rule will not have a "significant economic impact." The rescission of the categorical exemption regulations will not preclude a project owner from obtaining an exemption. Any proposed project that would qualify for a generic exemption also would qualify for an exemption under the case-specific procedures in §§ 4.101 through 4.108 of the Commission's regulations. Under the case-specific procedures, a developer must file an application for exemption instead of the short notice of exemption that is requred under the categorical exemption procedures. Any resulting difference in costs to the project owner, however, will have an insignificant effect on total project costs.

Therefore, pursuant to section 605(b) of the RFA, the Commission certifies that this rule, if promulgated, will not

[5] Procedures for exemption on a case-by-case basis are set forth in §§ 4.101 through 4.108 of the Commission's regulations. 18 CFR 4.101 through 4.108 (1987).

[6] Order No. 202-B, 47 FR 46269 (Oct. 18, 1982), FERC Stats. & Regs., [Reg. Preambles 1982-1985] ¶ 30,403 (Oct. 12, 1982).

[7] 47 FR at 4233-4234; 47 FR at 46270.

[8] 47 FR at 4233; 47 FR at 46270.

[9] "Exemption From Licensing Requirements of Part I of the Federal Power Act of a Category of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less," 52 FR 21576 (June 8, 1987), FERC Stats. & Regs. ¶ 32,444 (June 2, 1987).

[10] A total of 46 exemptions were granted. Of these five were surrendered and four were revoked, leaving 37 exemptions issued under the categorical exemptions regulations.

[11] Section 551(4), Administrative Procedure Act, 5 U.S.C. 551(4).

have a "significant economic impact on a substantial number of small entities."

List of Subjects in 18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 4 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142 (1978).

2. The table of contents for Subpart K of Part 4 is amended by removing §§ 4.109 through 4.113 and the corresponding titles.

§ 4.101 [Amended]

3. Section 4.101 is amended by removing the words "or categorical".

§ 4.106 [Amended]

4. In § 4.106, paragraph (c) is amended to remove the words "or a notice of exemption from licensing".

§§ 4.109 through 4.113 [Removed]

5. Part 4 is amended by removing §§ 4.109–4.113.

[FR Doc. 87–24618 Filed 10–22–87; 8:45 am]
BILLING CODE 6717–01–M

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18 CFR Part 284

[Docket Nos. RM87–34–001 through –052]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

October 16, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing in part, granting rehearing in part, and modifying prior order.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is extending to January 1, 1988 the date by which the submission of an offer of take-or-pay or take-and-pay credits is required to continue transportation that was ongoing on September 15, 1987; the effectiveness of the stay of the contract demand conversion provisions at 18 CFR 284.10 is also extended to January 1, 1988. In addition, the Commission is modifying its Order No. 500 to require open access of interstate pipelines to transport all volumes of natural gas tendered if offers of take-or-pay or take-and-pay credits are received from producers of at least 85 percent of the volumes to be transported and the names of those who have not signed offers are provided to the pipeline; if any member of the 15 percent (or less) volumetric minority subsequently provides that pipeline with an offer of credits, then credits will also be required for any of its volumes transported since the initial transaction commenced. The Commission is also modifying the Order No. 500 interim regulations to make clear that the gas must be transported after the pipeline receives a signed offer even though there may be disputes as to the adequacy of the offer itself; that notarization of the offer of credits in affidavit form is not required; that the offer of credits need not be irrevocable but need only be sufficient to create a binding contract upon acceptance; and that although the Commission is still available as a forum for resolving disputes as to the interpretation of the crediting rule, nothing in the rule requires parties to waive any legal rights otherwise available to them.

DATES: The effective date for the changes in the regulatory text is October 16, 1987. The suspension of § 284.10 is removed effective January 1, 1988; this order supersedes any previous notice of removal of suspension. The dates for: (1) Submission of an offer of take-and-pay or take-or-pay credits and (2) the stay of the conversion provisions are extended to January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Peter J. Roidakis, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8213.

SUPPLEMENTARY INFORMATION:

Order

[Order No. 500–B]

Federal Energy Regulatory Commission

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

On August 7, 1987, the Commission issued Order No. 500[1] which promulgated interim regulations in response to the decision of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors v. FERC.*[2] Between August 28 and September 8, 1987, parties representing all segments of the natural gas industry filed 44 timely requests for rehearing of Order No. 500.[3] A number of companies affected by the crediting mechanism have filed for a stay of the crediting procedures.[4] In addition, thousands of pages of formal comments on the Order No. 500 interim rule have been filed with the Commission. Upon consideration, the Commission has determined to extend certain effective dates and to make certain substantive changes to the crediting mechanism for transactions that were ongoing on September 15, 1987.

II. Discussion

The Commission hereby grants the producers' requests for a stay of the take-or-pay crediting mechanism. Accordingly, the date by which the submission of an offer of credits is required to continue transportation that was ongoing on September 15, 1987, is extended to January 1, 1988. In addition, the effectiveness of the stay of the § 284.10 conversion provisions is also extended to January 1, 1988. (*See* Order No. 500, FERC Stats. & Regs. ¶ 30,761 at 30,801 n.24.) This change is made to accommodate the industry's need for additional time to arrange transactions under the terms of Order No. 500, particularly the crediting mechanism.

The substantive changes in the crediting mechanism that the Commission has decided to make are in response to problems pointed out by certain petitioners. (*See, e.g.* Emergency

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[1] 52 FR 30,334 (Aug. 14, 1987). The interim regulations became effective on September 15, 1987.

[2] 824 F.2d 981 (D.C. Cir. 1987).

[3] Several late-filed applications for rehearing and motions for clarification have also been filed. *See, e.g.*, motion of Hadson Gas Systems, Inc. filed September 11, 1987; application for rehearing of Texas Gas Transmission Corporation filed September 9, 1987; emergency petition of Tenneco Oil Company, *et al.* for clarification, stay and waiver filed September 25, 1987.

[4] *See, e.g.*, Phillips Petroleum Company, Motion for Stay, filed September 8, 1987, in Docket No. RM87–34–000; Answer of Amoco Production Company in support of Phillips' motion, filed September 22, 1987; and Emergency Motion of Mobil Oil Corporation for partial Stay of Order No. 500, filed September 24, 1987 at 1–2 ("Mobil seeks only to stay the take-or-pay crediting mechanism, and only until the Commission has had an opportunity to analyze the industry's first comments on that mechanism * * * .").

Petition of Tenneco Oil Company, *et al.*, filed September 25, 1987, and Emergency Motions of Arco Oil and Gas Company, and of Marathon Oil Company, both filed October 1, 1987.) Specifically, Order No. 500, in § 284.8(f)(2)(ii), requires that an affidavit must "be signed by the producers and all other persons who own the gas required to offer take-or-pay or take-and-pay credits. . . ." As written, the regulation requires all producers and working interest owners that own the gas to sign the affidavit.

According to several petitioners, many leases are owned by more than one working interest owner; sometimes, in fact, there may be a multiplicity of working interest owners with extremely small ownership interests. The failure to obtain affidavits from a minority of multiple owners, controlling only a small percentage of the volumes, may, it is alleged, effectively prevent transportation for the majority, who may be more than willing to grant take-or-pay crediting to the pipeline to secure transportation (*See e.g.*, Emergency Petition for Tenneco Oil Company, *et al.*).

To remedy this situation the Commission is modifying the requirements so that if offer(s) of credits are received from those required under the rule to sign an offer of take-or-pay credits that would account for at least 85 percent of the *volumes* to be transported, then transportation must be provided by the pipeline for all volumes tendered, including the 15 percent of volumes owned by persons or entitites that do not submit an offer of credits. There would thus be no credits at that time arising from the transportation of that 15 percent (or less) of the volumes tendered. Since the purpose of the Commission's modification is to prevent small owners from preventing the transportation of the majority's gas, the Commission is requiring that the *volumetric* interests related to those signing offers of take-or-pay credits comprise at least 85 percent of the volumes to be transported. The "85 percent of volumes rule" will adjust for situations where the owners of 15% or less of the volumes are either unwilling or unavailable to offer crediting.

The Commission wishes to stress, however, that a single working interest cannot be split for the purpose of Order No. 500 take-or-pay credit offers if that interest was not separate on June 23, 1987. For example, if a producer owns a 100% working interest in the volumes to be transported, the producer cannot split that interest and only offer credits on 85% of the volumes to be transported.

Where a pipeline receives offers covering 85 percent or more of the volumes to be transported, and signed by the appropriate persons or entities as required under the interim rule, the pipeline also must be provided with a list of the persons or entities whose 15 percent minority volumes will also be transported, but who did not sign an offer of credits. If, at any time subsequent to the commencement of that transaction, any member of the 15 percent (or less) volumetric minority should tender to that pipeline an offer providing take-or-pay or take-and-pay credits pursuant to Order No. 500, that person or entity will be required also to provide credits for any of its volumes transported since the commencement of the initial transaction.

The Commission is mindful of the Court of Appeal's requirement that the Commission address the impact of open access transportation on take-or-pay liability. Although the 85% of volumes rule may initially affect the take-or-pay relief pipelines may obtain when compared with the crediting mechanism originally established in Order No. 500, the Commission has determined, based on industry comment received to date, that this pragmatic adjustment to the crediting mechanism is necessary, will not substantially lessen the take-or-pay relief made available, and will, in some circumstances, increase the availability of crediting. This is because the adjustment is intended to eliminate a potential impediment to transporting under the rule and thereby increase the amount of transportation and, correspondingly, the take-or-pay credits that pipelines will receive.

In addition, the Commission has become aware that the requirement that the offer of credits must be an "irrevocable offer" is unnecessary since the Commission only intended that the offer, upon acceptance, should form a binding contract. Similarly unnecessary is the requirement that the producer agree to abide by any Commission determination concerning the interpretation of the crediting mechanism. It was not intended to require producers to waive their legal rights, yet it has been interpreted that way. (*See, e.g.*, Emergency Motion for Expedited Clarification of Mobil Oil Corporation, *et al.*) Furthermore, the use of an "affidavit" as the vehicle for the offer appears to be problematic in that such documents require notarization which is cumbersome, while a simple signed contract offer may not require attestation through a notary.

The Commission finds that these points merit attention at this time. Accordingly, the Commission is deleting the term "irrevocable" from the phrase "irrevocable offer" in §§ 284.8(f)(2)(iii) and 284.9(f)(2)(iii). In addition, the Commission is deleting the provision that the producer must agree to abide by any Commission determination concerning the interpretation of the crediting mechanism. This provision has been construed as limiting the rights of the producers to challenge Order No. 500 or subsequent orders implementing the regulations. Such construction is beyond the Commission's intention of providing a forum to resolve disputes between pipelines and producers as to the operation of the crediting mechanism. The Commission is still available as a forum to resolve disputes as to the interpretation of the crediting rule even though the producer does not agree in the offer not to seek judicial review of the Commission's decision.

Similarly, the Commission is eliminating the requirement that the offer of credits be made in an "affidavit." Such a document requires notarization, an unnecessarily cumbersone step. The purpose of the rule can easily be accomplished if the offer of credits is simply made through a signed document which upon acceptance would create a binding contract. Accordingly, the Commission is amending the interim regulations to make this clear, and is replacing the term "affidavit" with the term "offer" in §§ 284.8(f) and 284.9(f).

Finally, the Commission has modified §§ 284.8(f)(3) and 284.9(f)(3) that require the pipeline to transport after it receives a signed offer under §§ 284.8(f)(1)(ii) and 284.9(f)(1)(ii) without regard to any disputes. The modification is intended to make clear that the gas must be transported even though there may be disputes as to the adequacy of the offer itself.

The Commission declines to make additional adjustments or modifications of Order No. 500 at this time. The Commission will have the opportunity to analyze the filings and requests for changes already submitted in conjunction with the comments that have been received. All such data, views and comments may thus be considered together before the Commission undertakes any further action on Order No. 500.

III. Administrative Findings

The Commission is modifying some of the effective dates integral to the implementation of Order No. 500. The Commission finds that the public interest would be served and that good cause exists to make these extensions

effective immediately pursuant to sections 553(b)(B) and 553(d)(3) of the Administrative Procedures Act (APA). Moreover, the time extensions granted herein relieve restrictions and provide a limited stay of the conversion option and the crediting requirements for ongoing transportation, and are appropriately made effective without the customary 30-day advance publication under APA section 553(d). In addition, the modifications of the offer of take-or-pay crediting requirements become effective immediately. These modifications may be construed as relieving restrictions or requirements as to producer and transporters of gas, therefore making them appropriate to implement immediately. With respect to the substance of these changes, the Commission adopts and incorporates in support thereof the administrative findings stated in Part VI of Order No. 500.[5]

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission. Commissioner Sousa concurred with a separate statement attached. Commissioner Stalon dissenting in part with a separate statement attached. Commissioner Trabandt concurred with a separate statement attached. Commissioner Naeve concurred in part and dissented in part with a separate statement attached.

Kenneth F. Plumb,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES.

1. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142.

2. In § 284.8, paragraphs (f)(1)(ii), (f)(2), (f)(3), (f)(4) introductory text and (f)(6) are revised to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(f)(1) * * *

(ii) An offer has been submitted to the pipeline satisfying the requirements of paragraph (f)(2) of this section.

(2) An offer to satisfy this section need not be notarized but must:

(i) Identify the gas made eligible for transportation through the filing of the offer,

(ii) Be signed by the producer and all other persons who own at least 85 percent of the volumes of gas for which take-or-pay or take-and-pay credits are required to be offered under this section in connection with the transportation of the subject gas, and

(iii) Constitute an offer, which upon acceptance by the pipeline will result in a contract binding on the producers and their assignees, to grant the pipeline any credits under this section in connection with the transportation of the subject gas. The requirements of this section may be satisfied by a general offer applicable to all transportation transactions involving the subject gas.

(iv) Where a pipeline receives offer(s) of credits covering at least 85 percent of the volumes to be transported and signed by the producers and all other persons required to offer take-or-pay or take-and-pay credits under this section in connection with the transportation of the subject gas, the pipeline must be provided with the names of the persons or entities that have not signed and comprise the 15 percent (or lower) volumetric minority.

(v) If, at any time after the commencement of a transaction under § 284.8(f)(2)(iv) above, any one of those producers or other persons that did not submit an offer of credits should subsequently sign and tender a document offering take-or-pay and take-and-pay credits pursuant to this part, then that producer or other person must also provide credits for any of its volumes transported in the transaction where it was in the 15 percent (or lower) volumetric minority not signing an offer of credits.

(3) Once the offer and names required by this section are submitted to the pipeline, the pipeline must transport the gas, subject to the conditions of this part, notwithstanding any dispute concerning either the adequacy of the offer made under § 284.8(f)(1)(ii) or how the crediting is to be performed.

(4) If a pipeline is requested to transport gas which on June 23, 1987, was owned by a producer who on that date owned gas sold to the pipeline under a contract or contracts executed before June 23, 1987, which contain take-or-pay or take-and-pay provisions, and receives the offer required by paragraph (f)(2) of this section, the pipeline may receive credits as follows:

* * * * *

(6) If on September 15, 1987, a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation under this part on January 1, 1988, unless the pipeline and the shipper or producer agree, or an offer of take-or-pay or take-and-pay credits has been submitted to the pipeline, as provided under paragraph (f)(2), offering the pipeline credits. Such credits shall commence from the date the offer of credits is submitted.

* * * * *

3. In § 284.9, paragraphs (f)(1)(ii), (f)(2), (f)(3), (f)(4) introductory text and (f)(6) are revised to read as follows:

§ 284.9 Interruptible Transportation Service.

* * * * *

(f)(1) * * *

(ii) An offer has been submitted to the pipeline satisfying the requirements of paragraph (f)(2) of this section.

(2) An offer to satisfy this section need not be notarized but must:

(i) Identify the gas made eligible for transportation through the filling of the offer,

(ii) Be signed by the producer and all other persons who own at least 85 percent of the volumes of gas for which take-or-pay or take-and-pay credits are required to be offered under this section in connection with the transportation of the subject gas, and

(iii) Constitute an offer, which upon acceptance by the pipeline will result in a contract binding on the producers and their assignees, to grant the pipeline any credits under this section in connection with the transportation of the subject gas. The requirements of this section may be satisifed by a general offer applicable to all transportation transactions involving the subject gas.

(iv) Where a pipeline receives offer(s) of credits covering at least 85 percent of the volumes to be transported and signed by the producers and all other persons required to offer take-or-pay or take-and-pay credits under this section in connection with the transportation of the subject gas, the pipeline must be provided with the names of the persons or entities that have not signed and comprise the 15 percent (or lower) volumetric minority.

(v) If, at any time after the commencement of a transaction under § 284.9(f)(2)(iv) above, any one of those producers or other persons that did not submit an offer of credits should subsequently sign and tender a

[5] Order No. 500, FERC Stats. & Regs. ¶ 30,761 at 30,798–99.

document offering take-or-pay and take-and pay credits pursuant to this part, then that producer or other person must also provide credits for any of its volumes transported in the transaction where it was in the 15 percent (or lower) volumetric minority not signing an offer of credits.

(3) Once the offer and names required by this section are submitted to the pipeline, the pipeline must transport the gas, subject to the conditions of this part, notwithstanding any dispute concerning either the adequacy of the offer made under § 284.9(f)(1)(ii) or how the crediting is to be performed.

(4) If a pipeline is requested to transport gas which on June 23, 1987, was owned by a producer who on that date owned gas sold to the pipeline under a contract or contracts executed before June 23, 1987, which contain take-or-pay or take-and-pay provisions, and receives the offer required by paragraph (f)(2) of this section, the pipeline may receive credits as follows:

* * * * *

(6) If on September 15, 1987, a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation under this part on January 1, 1988, unless the pipeline and the shipper or producer agree, or an offer of take-or-pay or take-and-pay credits has been submitted to the pipeline, as provided under paragraph (f)(2), offering the pipeline credits. Such credits shall commence from the date the offer of credits is submitted.

* * * * *

4. The suspension of § 284.10 is removed effective January 1, 1988; this order supersedes any previous notice of removal of suspension.

[Editorial Note: These dissenting statements will not appear in the Code of Federal Regulations.]

Sousa, Anthony G., Commissioner, concurring

It is with great reluctance that I concur in this decision to grant rehearing for the limited purpose of extending the implementation date of Order No. 500 and to correct minor deficiencies in the affidavit process.

Order No. 500 was a consensus or compromise decision issued by the full Commission after prolonged and careful deliberations. Order No. 500 was issued August 7, 1987, more than two months ago, and I believe that the parties have had enough time to understand the concept of simple affidavits and take-or-pay crediting as a condition to transportation access.

In my earlier concurring opinion I said that Order No. 500 was "a part of the Commission's ongoing program to provide open access transportation services by pipeline companies. Continuation of this program is essential so that the many benefits of competitive gas pricing accorded by open access transportation to all sectors of the nation's natural gas industry and consumers are not denied."

The Court in reviewing Order No. 436 stated in essence that open access transportation should be conditioned on take-or-pay relief and approved Order No. 500 which was the Commission's response to the Court's review of Order No. 436. I am convinced that all segments of the industry in a spirit of cooperation can immediately implement Order No. 500 and bring about the beneficial desired results to the industry as a whole.

We are now extending the implementation until January 1, 1988, a full 145 days from the time we issued Order No. 500. Although I join in granting the extension, I do this only so that it cannot later be said that the Commission made it impossible for the industry to implement Order No. 500. My reluctance is based on the fact that we have now created a perception to the industry that the Commission does not have the backbone to take direct action to resolve the take-or-pay problem which up to now has been a serious impediment to open access transportation. Furthermore I am concerned that we have given a message to the reviewing court that we are not serious in our efforts to carry out its mandate. As I have said before, the cross-crediting mechanism is the linchpin which held the dissonant positions of the various Commissioners together in a compromise decision in Order No. 500. Any further tampering with this provision in my opinion will destroy the incentive for open access transportation based on take-or-pay relief.

I further believe that between now and January 1, 1988, this Commission should initiate a section 5 proceeding to ensure its commitment to open access transportation based on take-or-pay relief.

Anthony G. Sousa,

Commissioner.

Stalon, Commissioner, dissenting in part

I dissent to that part of the order that extends the effective date of crediting until January 1, 1988. All parties have known since August 7, 1987 the arrangements necessary to satisfy Order No. 500, and I have not been fully persuaded that any delay is necessary. The fact that those who will profit from the delay are most vociferous in insisting upon it is not surprising but it also emphasizes the need for skepticism. Still, I was willing to grant a delay until December 1, 1987 to accommodate the strong desires being expressed. I cannot, however, approve a delay until January 1, 1988. The objective is to reduce the take-or-pay problem, not to let it continue to grow.

Charles G. Stalon,

Commissioner.

Concurring Opinion of Commissioner Charles A. Trabandt

I support the action of the Commission in this order to delay until January 1, 1988, the effective dates pursuant to Order No. 500 for: (1) Crediting and (2) lifting the stay of § 284.10. The delayed effectiveness of these two key provisions sought by numerous parties will provide a more complete opportunity for customers, producers, shippers, and interstate pipelines to prepare for implementation of the crediting and contract demand conversion mechanisms. In my judgment, this action is consistent fully with the July 17, 1987, Order of the U.S. Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *Federal Energy Regulatory Commission* (No. 85-1811), where the Court noted "the concern expressed by numerous parties that natural gas be kept flowing during the period of transition and that uncertainty be minimized to the greatest extent possible" and concluded that "FERC's proposed course of action reflects an adequate recognition of these concerns and is well within its discretion." (Accompanying memorandum, page 1.) I believe this action also satisfies the standards for implementing an interim rule as set forth in the same Court's opinion in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, No. 86-1414 (D.C. Cir. June 30, 1987), where the Court concluded "that the Commission's interim procedures are adequate, as a temporary measure, to afford some protection * * * and that they strike a reasonable balance, fairly accommodating the interests of all affected parties, while the Commission considers a permanent solution * * *". The delay of the effectiveness of crediting is particularly important to avoid: (1) Any unnecessary uncertainty as to the implementation of this interim rule, (2) any interruption in the flow of natural gas in the interstate pipeline system, and (3) any resulting disruption in the operation of the natural gas market.

For the same reasons, I support the several technical clarifications and refinements associated with the crediting mechanism in this Order. While technical in nature and relatively modest in effect, these clarifications and refinements should improve the practical workability of the crediting mechanism and reduce the administrative burden on affected parties. Again, I am satisfied that these modifications to Order No. 500 are consistent with, and satisfy, the Court's concerns in the *AGD* v. *FERC* and the June 30 *Mid-Tex* opinion.

Finally, I recognize that this Order defers action on a series of significant issues relating to the implementation and operation of the crediting mechanism, which have been raised in the many petitions for clarification and rehearing of Order No. 500 and the more recent and very extensive public comments on the new rule. While this Order, on balance, is an improvement of the original crediting mechanism in Order No. 500, I am persuaded that we still must address as soon as possible the other outstanding and significant issues associated with the crediting mechanism and affirmatively dispose of them. The analysis and disposition of the crediting mechanism issues, whether styled as further rehearing of Order No. 500 or accomplished as part of a final rule, should proceed concurrently with our analysis of the broader public policy issues raised in the

public comments on the rule. In my judgment, that is the only sure way to avoid the potential for unnecessary uncertainty, interruption, and disruption discussed above, particularly in the midst of the 1987–1988 winter heating season. Consequently, my support for this order is premised on the expectation that the Commission will proceed promptly to analyze comprehensively and objectively all of those crediting mechanism issues and dispose of those issues.

Charles A. Trabandt,

Commissioner.

Commissioner Naeve, Concurring in Part and Dissenting in Part

Today the Commission has issued an order denying rehearing in part, granting rehearing in part, and granting an extension until January 1, 1988 for the implementation of the crediting provisions of Order No. 500. These changes are intended to address in part some of the concerns that have been raised as to the implementation of the crediting provisions. I appreciate the efforts my colleagues have made to address some of the workability problems. However, I am concerned that the rule contains a number of serious practical shortcomings that must also be addressed as soon as possible. I am fearful that due to the complexity of Order No. 500, the unintended effect of the rule will be to cause a substantial volume of gas to be removed from the spot market which will cause resulting price increases. Therefore, additional changes to Order No. 500 are necessary to facilitate the free flow of gas and to better enable parties to operate under the rule. Because this order does not address all of the changes which I believe are necesssary, I must dissent in part from today's Commission order. My concerns include, but are not limited to:

Problems Arising from the Lack of Identity Between Interest Ownership in Different Contracts. The cross crediting feature of Order No. 500 allows pipelines to credit gas transported against other contracts. This feature has the unfortunate effect of introducing a high degree of administrative complexity due to the nature of the natural gas industry. The majority has made a good faith effort to mitigate some of the difficulties arising from the cross crediting provisions. Although I appreciate their willingness to address these concerns, I believe that alternative approaches would be more workable. In particular, I am concerned about the feature in this order which would allow pipelines to retain an entitlement to credit for transported volumes as to parties that do not initially provide offers to credit. This banking of credit entitlements will result in enormous administrative complexity and may limit the ultimate amount of gas made available for transportation by producers who accumulate sizeable credit obligations in entitlement banks.

Intrastate pipeline offsystem sales transactions. When an intrastate pipeline sells system supply gas offsystem under section 311(b) of the NGPA, it must sell the gas at its rolled-in cost of gas. In the event that such volumes are transported by an interstate pipeline, Order No. 500 currently provides that the interstate pipeline may refuse to transport such gas unless the producers and working interest owners of such gas offer to provide take-or-pay credits. Although the interstate pipeline may waive its right to obtain such offers, it is not required to do so. (Indeed, the interstate pipeline may have good reasons for refusing to do so. For example, the proposed offsystem sale may displace the interstate pipeline's sale. Or, the pipeline may fear that any waiver of the crediting requirements may result in a claim by its customers in a purchasing practice case that the pipeline failed to sufficiently mitigate its take-or-pay obligations. Hence, an interstate pipeline may feel compelled to require such offers through the intrastate pipeline.) Inasmuch as the cost of gas volumes must be rolled-in, the intrastate pipeline must in this situation obtain the offers from every one of possibly tens of thousands or even hundreds of thousands of working interest owners of all of the wells from which it purchases for system supply. This result is so administratively burdensome as to effectively preclude intrastate pipelines from selling their gas offsystem if the transaction will require transportation on an interstate pipeline. In addition, the refusal of the owners of a single well to offer a credit may effectively preclude the offsystem sale. Finally, to the extent that the intrastate pipeline has settled its take-or-pay liability with its producers, such producers would be subject to double crediting.

Processing Plant Tailgate Sales. A similar problem arises where a processor purchases gas at the wellhead and makes resales of the residue gas at the tailgate of the plant. Hundreds of wells representing thousands of working interest owners may feed into such facilities. This is another situation where the refusal of the owners of a single well to offer a credit may effectively preclude the tailgate sale. Additionally, the administrative complexity of obtaining offers from all working interest owners of all of the wells involved may hinder willing processors/resellers from effectuating a transportation transaction.

Restrictions on Alienation of Gas and Oil Properties. Order No. 500 contains provisions which are intended to prevent circumvention of the cross crediting requirements through the assignment of leases. Unfortunately, these provisions have the undesirable consequence of discouraging owners from transferring gas and oil properties for legitimate business reasons in situations where circumvention is unlikely. I am concerned that restrictions on the future transfers of gas properties and oil properties with associated gas will substantially interfere with routine and important business transactions. I agree with my colleagues that the Commission must be concerned with foreclosing the opportunity to circumvent the cross crediting requirements, but I believe that there are less burdensome alternatives than those set forth in Order No. 500.

Prior Take-or-Pay Settlements. I believe that the Commission should make an effort to accommodate and protect existing take-or-pay settlements. Where a pipeline has entered into an agreement to resolve its take-or-pay obligations with a producer, the producer is exempt from crediting only where the contract has been terminated and gas is no longer committed to the pipeline. If a take-or-pay settlement does not result in such termination, crediting may still be required, even where the pipeline has already agreed under that settlement to transport the gas released in return for certain take-or-pay relief. Some producers have cooperated with pipelines in reaching settlements of their take-or-pay difficulties. Such settlements involve the exchange of consideration between the two parties. In situations in which a part of the consideration provided by the pipeline in exchange for take-or-pay relief is an agreement to provide transportation for that producer's gas, I would prefer that the Commission respect the terms of those settlements and not require additional credits for that transportation.

In conclusion, I agree with my colleagues that we must be responsive to the issues raised by the Court in *AGD.* However, I am concerned that without further immediate action to address some of the serious practical shortcomings in Order No. 500, the industry will be mired in administrative gridlock. As a result, spot market gas may no longer be transported, and gas costs to consumers may increase, thereby causing the same result that the Court sought to avoid when it remanded Order No. 436 to the Commission for reconsideration of the take-or-pay issue. The majority does not expect these results. I hope they are right. In any event, I hope that they will keep in mind and reconsider addressing these concerns before the rule goes into effect on January 1, 1988.

C.M. Naeve,

Commissioner.

[FR Doc. 87–24617 Filed 10–22–87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Old-Age, Survivors, and Disability Insurance; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; Correction.

SUMMARY: The Final Rule which appeared in the Federal Register on August 11, 1987 (52 FR 29659) provided incorrect authority citations for the rules in Part 404, Subpart K, of the Social Security Administration regulations. These citations are being corrected at this time.

FOR FURTHER INFORMATION CONTACT: C. H. Campbell, Legal Assistant, 6401 Security Boulevard, Baltimore,

Maryland 21235, telephone (301) 597-3408.

SUPPLEMENTARY INFORMATION: On August 11, 1987, we published a Final Rule (52 FR 29659) that incorrectly stated certain authority citations for the rules in Subpart K—"Employment, Wages, Self-Employment, and Self-Employment Income." The authority citations for this Subpart had been correctly stated in a final rule (52 FR 27539) that was published earlier on July 22, 1987. This correction notice corrects the Subpart's authority citations so that the CFR will show, as the Subpart's authority, the citations contained in the July 22, 1987 Final Rule.

Accordingly, 20 CFR Part 404 is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

1. The authority citation for Subpart K is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a), 430, 431, and 1302.

(Catalog of Federal Domestic Assistance Program No. 13.802; Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance)

Dated: October 16, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87-24561 Filed 10-22-87; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F-0294]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of Nylon 6/12 resins in contact with food. This action responds to a petition filed by EMS-CHEMIE AG.

DATES: Effective October 23, 1987; objections by November 23, 1987. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 177.1500, effective on October 23, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 31, 1986 (51 FR 27461), FDA announced that a petition (FAP 5B3848) had been filed by EMS-CHEMIE AG, Domat, Switzerland, proposing that § 177.1500 *Nylon resins* (21 CFR 177.1500) be amended to provide for the safe use of Nylon 6/12 resin in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 177.1500 to provide for the use of this ingredient. To do so, the agency is adding a new paragraph (a)(13) to § 177.1500, adding a new "Viscosity Number" column and a new item 13 to the table in paragraph (b) of this regulation, and by adding a new paragraph (c)(5) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before November 23, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director and Deputy Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1500 is amended by adding new paragraph (a)(13), by adding a new column and a new item 13 to the table in paragraph (b), and by adding new paragraph (c)(5), to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(a) * * *

(13) Nylon 6/12 resins (CAS Reg. No. 25194-04-2) are manufactured by the copolymerization of a 1 to 1 ratio by weight of *epsilon*-caprolactam and *omega*-laurolactam.

* * * * *

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HCl	Viscosity No.	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
• •	•	•	•	•	•			
13. Nylon 6/12 resins for use only in food-contact films having an average thickness not to exceed 51 microns (0.002 inch). The finished film is intended to contact all foods except those containing more than 8 percent ethanol under conditions of use B, C, D, E, F, G, and H listed in table 2 of § 176.170(c) of this chapter.	6/12 1.06±0.015	260–285	Dissolves in 1 hour.	Greater than 140...	2.0	.....	1.5	1.5

(c) * * *

(5) *Viscosity number (VN).* The viscosity number (VN) for Nylon 6/12 resin in a 96 percent sulfuric acid solution (5 milligrams resin per milliliter) shall be determined at 25 °C (77 °F) by method ISO 307–1984(E), "Plastics-Polyamides-Determination of Viscosity Number," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Dated: October 16, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–24523 Filed 10–22–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 660

[Docket No. 85N–0184]

Limulus Amebocyte Lysate; Reduction of Samples for Testing

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations in the additional standards for Limulus Amebocyte Lysate (LAL) by reducing the number of containers for potency and quality tests and the number of samples submitted to FDA for testing. FDA is amending the LAL testing requirements because adequate data are now available to demonstrate that the new requirements provide the same assurances of acceptable product suitability as the current regulatory requirements. The amendments will result in an economic benefit for manufacturers of LAL because fewer final containers will be utilized for testing the product.

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph G. Wilczek, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1980 (45 FR 32296), FDA published additional standards under 21 CFR Part 660 for the manufacture of LAL. LAL is prepared from the circulating blood cells (amebocytes) of the horseshoe crab (*Limulus polyphemus*). It is a licensed biological product used as a reagent for in vitro testing to detect bacterial endotoxins (pyrogens) in certain human and animal parenteral drugs, biological products, and medical devices.

In the preamble to the 1980 final additional standards for LAL, FDA responded to comments received on the proposed rule. Included in the comments was one suggestion to reduce the minimum number of vials (20) required under § 660.102 for performing the Potency test for LAL (item number 2 of the 1980 final rule). A similar comment suggested that a smaller sample size be required under § 660.103(f) for performing the test for quality (item number 19 of the 1980 final rule). FDA rejected the comments at that time because it concluded that at least 20 vials of test lysate were necessary for performing the tests to ensure that the procedures were statistically valid for estimating vial-to-vial variability of the test lysate. In 1980, there were only a few licensed manufacturers of LAL and the available data concerning potency and quality were insufficient for FDA to reduce the sample size for testing (required since the product was first licensed in 1977) while maintaining confidence that the tests were statistically valid. However, after several years of accumulating data related to LAL, FDA has reviewed the data and has now reconsidered the comments concerning test sample size requirements in the LAL additional standards. FDA now believes that there are adequate data to demonstrate that the required potency and quality of LAL can be assured if the sample size for testing under §§ 660.102 and 660.103(f) is reduced from a minimum of 20 vials to 8 vials. A summary of the data on which FDA has based this conclusion is on file at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Background

In the **Federal Register** of October 14, 1986 (51 FR 36563), FDA proposed to amend §§ 660.102 and 660.103(f) to reduce the number of samples for testing potency and quality, respectively, from the currently required minimum of 20 vials from each filling to 8 vials from each filling. Consistently, FDA also proposed to amend § 660.105(a)(1) to reduce the currently required number of vials of lysate submitted to FDA for testing from 28 vials to the number used in the potency test under § 660.102. FDA advised that proposed § 660.102 would permit the sample size to be increased to 28 vials if the potency test result was invalid when tested with a smaller sample size.

FDA expects that the number of samples submitted to FDA under § 660.105(a)(1) will routinely be eight vials, although the number of samples submitted will be greater if a manufacturer uses more than eight vials to obtain a valid potency test. This rule requires manufacturers to submit to FDA the same number of vials used by the manufacturer for its potency testing in order to duplicate the test procedures and results, and to facilitate release of the product.

Comments

FDA received one letter of comment in response to the proposed rule. The comment, from a pharmaceutical manufacturer that is not licensed to produce LAL, stated that the company has experienced a high level of variability in testing several lots of LAL by an FDA-approved test method. Therefore, the comment doubted that a reliable estimate of the potency of an LAL lot can be achieved on the basis of an eight-vial sample using current testing methodology. The firm that submitted the comment did not provide any test data and stated that it had not

reviewed FDA's data placed in the public docket for this rulemaking.

FDA has reviewed certain data accumulated over 5 years from the agency's testing of LAL and the test data from the licensed manufacturers of LAL. These data clearly demonstrate that a reliable estimate of the potency of a lot of LAL can be achieved when testing a minimum of 8 vials of the lot, rather than the currently required minimum of 20 vials, by the test method in § 660.102. FDA believes that a laboratory's failure to reproduce the labeled potency of a lot of licensed LAL may be due to improper mixing of the endotoxin and any significant variability of test results is not caused by testing a minimum of eight vials of each lot of LAL. Therefore, FDA rejects the comment and is publishing the final rule as proposed.

Environmental and Economic Impact

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the rule will reduce the number of samples that each of the six currently licensed manufacturers are required to test and submit to FDA for agency testing and official release of each lot of LAL, resulting in reduced costs. Therefore, the agency concludes that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 660

Biologics, Labeling.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, Part 660 is amended as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

1. The authority citation for 21 CFR Part 660 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690, as amended, 702, as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

2. By revising the fourth sentence in the introductory paragraph of § 660.102 to read as follows:

§ 660.102 Potency test.

* * * A minimum of 8 vials and a maximum of 28 vials from each filling or, if freeze-dried, from each drying chamber run representing all parts of the chamber load, shall be tested in parallel with an equal number of tests from 1 or more vials of the U.S. Reference Lysate. * * *

* * * * *

3. By revising § 660.103(f)(1) to read as follows:

§ 660.103 General requirements.

* * * * *

(f) * * *

(1) Samples from each of eight final containers from each filling or, if freeze-dried, from each filling in each drying chamber run representing all parts of the chamber load, shall be used.

* * * * *

4. By revising § 660.105(a)(1) to read as follows:

§ 660.105 Samples and protocols; official release.

(a) * * *

(1) *Samples.* Not fewer than the number of vials of lysate used for the potency test in § 660.102, two of which shall be complete market packages, packaged for distribution and including all ancillary reagents and materials.

* * * * *

Dated: September 29, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-24524 Filed 10-22-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

42 CFR Parts 412 and 413

[BERC-466-N]

Medicare Program; Legislative Changes Affecting Payments to Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of legislative changes.

SUMMARY: This notice identified certain Medicare regulations that are affected by enactment of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. That legislation has an impact on the applicability of the provisions of those regulations concerning payment for inpatient hospital services. In addition, it nullifies two recently published final rules concerning capital payments under the inpatient hospital prospective payment system and changes to the return on equity capital provisions for outpatient hospital services.

FOR FURTHER INFORMATION CONTACT: Anthony Coates (return on equity capital), (301) 597-2886; or Linda Magno (all other issues), (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Summary of New Legislation

On September 29, 1987, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100-119) was enacted. Section 107(a)(1) of Pub. L. 100-119 makes certain changes to the payment policies for inpatient hospital services as follows:

- For discharges occurring on or after October 1, 1987 and before November 21, 1987, the applicable percentage increase used to update the inpatient hospital prospective payment system average standardized amounts for Federal fiscal year (FY) 1988 is zero percent.
- For the period October 1, 1987 through November 20, 1987, the national/regional blend of the Federal portion of a hospital's prospective payment rate remains at 50 percent national and 50 percent regional.
- For the first 51 days of a hospital's cost reporting period beginning during FY 1988, the hospital's prospective payment rate continues to be composed of 75 percent of the Federal rate and 25 percent of the hospital-specific rate.
- The hospital's hospital-specific rate remains at the level it was during the hospital's cost reporting period that began during FY 1987.
- For hospitals excluded from the prospective payment system, the applicable percentage increase used to update the hospital's rate-of-increase limits is zero percent for the first 51 days of its cost reporting period beginning in FY 1988.
- The reduction to capital payments for hospitals subject to the prospective payment system remains at 3.5 percent for payments attributable to portions of cost reporting periods occurring during the period October 1, 1987 through November 20, 1987.
- For the first 51 days of a hospital's cost reporting period beginning during FY 1988, the applicable percentage used in determining the return on equity capital for inpatient hospital services remains at 75 percent.

In addition to these changes, section 107(a)(2) of Pub. L. 100–119 amended section 9321(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) to provide that the Secretary is prohibited from issuing after September 1, 1986 and before November 21, 1987 any final regulation that changes the methodology for computing the amount of payment for capital-related costs for inpatient hospital services. Further, any regulation published in violation of this prohibition is declared to be void and of no effect.

Section 107(b)(1) of Pub. L. 100–119 provides that the final regulation published on September 1, 1987 (52 FR 32920) concerning changes to the return on equity capital provisions for outpatient hospital services is void and of no effect.

II. Changes to the Inpatient Hospital Prospective Payment System

On September 1, 1987, we published a final rule in the **Federal Register** (52 FR 33034) to implement the fifth year of the prospective payment system. In that rule, we set forth the methods, amounts, and factors for determining the FY 1988 prospective payment rates. We also established new target rate percentages for determining the rate-of-increase limits for FY 1988 for hospitals excluded from the prospective payment system.

As a result of the enactment of Pub. L. 100–119, payment for inpatient hospital services under the prospective payment system in FY 1988 will be determined as follows:

- For discharges occurring on or after October 1, 1987 and before November 21, 1987, the average standardized amounts for FY 1988 are increased by zero percent rather than 2.7 percent as provided in the September 1, 1987 final rule. The revised standardized amounts are set forth in Tables 1a, 1b, and 1c, below.
- The prospective payment transition period is extended as follows:

—For discharges occurring on or after October 1, 1987 and before November 21, 1987, the Federal portion of a hospital's prospective payment rate will continue to be based on a blend of 50 percent of the national rate and 50 percent of the regional rate rather than 100 percent of the national rate.

—For the first 51 days of a hospital's cost reporting period beginning in FY 1988, the hospital's payment rate will remain a blend of 75 percent of the Federal rate and 25 percent of the hospital-specific rate, rather than becoming 100 percent of the Federal rate. The applicable hospital-specific rate for this period is the hospital's rate that was in effect for its cost reporting period beginning in FY 1987.

These changes affect the following prospective payment regulations in 42 CFR Part 412:

- Section 412.63 (c)(3) and (f)—Federal rates for fiscal year 1988.
- Section 412.70(b), (c)(4), (c)(5), (d)(3), and (d)(4)—General description of the determination of transition period payment rates.
- Section 412.73(c)(5)—Determination of the hospital-specific rate.
- Section 412.80(a)(1)(ii)(B)—General provisions concerning payment for outlier cases.
- Section 412.82(c)—Payment for extended length-of-stay cases (day outliers).

In addition, section 107(a)(1)(E) of Pub. L. 100–119 specifies that the rate-of-increase limits for hospitals excluded from the prospective payment system are increased by zero percent (rather than 2.7 percent) for the first 51 days of those hospitals' cost reporting periods beginning in FY 1988. This change affects § 413.40(c)(3)(i)(C)—Determination of target rate percentages for FY 1988.

All other provisions of the September 1, 1987 inpatient hospital prospective payment final rule are effective as described in that document. These include the following:

- Recalibration of diagnosis-related group (DRG) weights (and the related changes to the DRG classification system also published on September 1, 1987 (52 FR 33143)).
- Revised wage indexes.
- Incorporation of hospitals located in Puerto Rico into the prospective payment system.
- Changes to the regulations concerning—

—Review of DRG assignments;

—Payments to sole community hospitals;

—Referral center criteria; and

—Payment for services of nonphysician anesthetists.

- Revised outlier thresholds.
- Elimination of the exclusion for alcohol/drug hospitals and units.

With respect to the inclusion in the prospective payment system of previously excluded alcohol/drug hospitals and units effective for cost reporting periods beginning in FY 1988, we note that the provisions of section 107(a)(1) of Pub. L. 100–119 require the continuation of the 75 percent Federal/25 percent hospital-specific blend for the first 51 days of a hospital's cost reporting period. Therefore, alcohol/drug hospitals and units will be paid on this basis when their exclusion ends.

Alcohol/drug units will be paid based on their respective hospitals' hospital-specific rates. Since alcohol/drug hospitals were included in the prospective payment system when it was first implemented in FY 1984, hospital-specific rates have already been calculated for them. It is these rates, appropriately updated, that will be used in computing the blended payment rates for these hospitals. We will not recompute any alcohol/drug hospital's or unit's hospital-specific rate nor will we establish a new base period for these hospitals or units.

III. Payment of Capital Costs

On September 1, 1987, we also published a final rule in the **Federal Register** (52 FR 33168) that incorporated capital costs, except for payments to proprietary hospitals for a return on equity capital, into the inpatient hospital prospective payment system effective with cost reporting periods beginning on or after October 1, 1987. Section 107(a)(2) of Pub. L. 100–119 amended section 9321(c) of Pub. L. 99–509 to specify that, after September 1, 1986 and before November 21, 1987, the Secretary is prohibited from issuing any final regulations that change the methodology for computing the amount of payment for capital costs for inpatient hospital services and that any regulations published in violation of this prohibition are void and of no effect. Therefore, §§ 412.65 through 412.68 and 412.214, which were added to the regulations by the final rule on capital costs published on September 1, 1987 at 52 FR 33168 (as corrected on September 30, 1987 at 52 FR 36573), are not in effect. Conforming changes made to the following sections are also not in effect: §§ 412.1(a), 412.2 (c)(5) and (d)(1), 412.63(a)(1), 412.82(c), 412.84 (g) and (i), 412.92(d)(1)(iii), 412.96 (d) and (e), 412.113(a), and 412.125(b).

In addition to making the final rule on capital payments invalid, section 107(a)(1)(C) of Pub. L. 100–119 extended the 3.5 percent reduction to capital payments for hospitals subject to the prospective payment system, which was in effect for FY 1987, to portions of cost reporting periods occurring during the period October 1, 1987 through November 20, 1987. That reduction was scheduled to increase to seven percent on October 1, 1987. This change affects the regulations at § 413.64(g)(6)(i).

IV. Return on Equity Capital

On September 1, 1987, we published a final rule (52 FR 32920) that eliminated the allowance for a return on equity capital for outpatient services furnished by proprietary hospitals effective with

cost reporting periods beginning on or after October 1, 1987. In addition, as a part of that final rule, we made conforming changes to the regulations to describe the phase-out of the return on equity capital for inpatient hospital services effective for cost reporting periods beginning on or after October 1, 1986, which is mandated by the provisions of section 1886(g)(2) of the Social Security Act (the "Act").

Section 107(b)(1) of Pub. L. 100-119 specifies that the "final regulation * * * published on September 1, 1987 (52 FR 32920) and relating to changes to the return on equity capital provisions for outpatient hospital services is void and of no effect." Therefore, the amendments made by that final rule to § 413.157(b)(4), which specify that there is no allowance for the return on equity capital for outpatient services for cost reporting periods beginning on or after October 1, 1987, are not in effect.

The rates specified in the September 1, 1987 final regulations (published at 52 FR 32920) for return on equity capital for inpatient hospital services remain in effect, subject to one modification described below. Those rates are required by section 1886(g)(2) of the Act. However, section 107(a)(1)(D) temporarily modifies those rates by stating that the rate of return on equity capital for inpatient hospital services remains at 75 percent of the rate of return paid on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the first 51 days of a hospital's cost reporting period beginning during FY 1988 rather than becoming 50 percent as specified in section 1886(g)(2)(B)(ii) of the Act.

V. Tables

This section contains the tables referred to in section II of this preamble.

TABLE 1a.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2275.65	806.35	2067.38	572.51

TABLE 1b.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2378.06	837.25	2288.44	678.56
2. Middle Atlantic (PA, NJ, NY)	2156.25	802.62	2194.54	640.20

TABLE 1b.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR—Continued

	Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2286.31	734.03	2098.87	557.19
4. East North Central (IL, IN, MI, OH, WI)	2411.97	868.70	2123.45	618.12
5. East South Central (AL, KY, MS, TN)	2195.78	666.66	2080.12	519.45
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2284.93	790.76	2018.19	554.42
7. West South Central (AR, LA, OK, TX)	2294.57	733.56	1938.47	510.39
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2189.32	780.40	1969.71	590.55
9. Pacific (AK, CA, HI, OR, WA)	2141.09	895.49	1906.92	661.41

TABLE 1c.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	1992.58	358.26	1330.54	253.58

	Labor-related	Nonlabor-related
National	2225.01	749.50

(Sec. 107, Pub. L. 100-119)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: October 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-24644 Filed 10-21-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 61, 71, 91, 167, 169, and 189

[CGD 84-024]

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is amending the intervals between drydock and tailshaft examinations by extending them in most cases for certain classes of vessels. These changes will decrease the cost incurred by the marine industry in meeting these examination requirements and harmonize the intervals with those specified by the various classification societies and the intervals currently under consideration internationally.

DATES: Sections 31.10-24, 71.53-1, 91.43-1, 167.15-40, 169.234, and 189.43-1 are effective on April 20, 1988. All other provisions are effective on November 23, 1987. Comments on these interim final rules must be submitted on or before January 21, 1988.

ADDRESSES: Comments on these interim final rules should be mailed to Commandant (G-CMC/21), (CGD 84-024), U.S. Coast Guard Headquarters, Washington, DC 20593-0001. The comments may be delivered to and will be available for inspection or copying between 8 a.m. and 3 p.m., Monday through Friday, except holidays, at the Office of the Marine Safety Council (G-CMC/21), Room 2110, Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: LCDR Geoffrey D. Powers, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-1045.

SUPPLEMENTARY INFORMATION: On May 30, 1986, the Coast Guard published in the **Federal Register** (51 FR 19720) a notice of proposed rulemaking (NPRM). Two correction documents were published (51 FR 20847; June 9, 1986 and 51 FR 26439; July 23, 1986). On August 14, 1986, the comment period was reopened and extended until September 30, 1986 (51 FR 29116). A total of forty-six responses were received. A discussion of the comments received is presented below.

The Coast Guard has added certain provisions which were not specifically addressed in the NPRM. They are §§ 31.10-24, 71.53-1, 91.43-1, 167.15-40, 169.234, and 189.43-1 relating to the internal examination of integral fuel oil tanks. Therefore, the Coast Guard is soliciting comments on these sections as well as those sections that changed as a result of comments. The deadline for receipt of comments is January 21, 1988. Persons submitting comments should include their name and address, identify this rulemaking docket number [CGD 84-024] and the specific section of the rule or supporting documents to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped,

addressed post card or envelope is enclosed. The rule may be changed in light of the comments received.

All comments received before the expiration of the comment period will be considered before final action is taken on those sections. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in the drafting of this rule are LCDR Geoffrey D. Powers, Project Manager, and Mr. Stephen H. Barber, Project Attorney, Office of Chief Counsel.

Summary of Changes Made

(a) *Scope of a drydock examination.* The definition of a drydock examination, as proposed in the NPRM, would have significantly expanded the scope of a drydock examination over what is currently called for under existing regulations. Specifically, in addition to an examination of the vessel's underwater body, the NPRM definition of a drydock examination included all cargo and ballast tanks. This created problems, particularly for the owners of tank vessels. As an example, tank barges certificated for the carriage of Grade D and E cargos are currently required to have cargo tanks examined once every six years. The NPRM, by including cargo tanks in the scope of a drydock examination, unnecessarily reduced the cargo tank examination interval to twice every five years (the proposed drydock interval for salt water service). To correct these problems, the Coast Guard has redefined a drydock examination, limiting it to an examination of a vessel's underwater body, and added two new examination requirements (Cargo Tank Internal and Internal Structural examinations), each with its own interval.

Taking the NPRM's all inclusive drydock examination and breaking it up into three separate examinations—drydock, cargo tank internal, and internal structural—enables the Coast Guard to establish examination intervals which recognize the differences in vessel design and service. For the majority of ocean going vessels, the intervals for all three examinations are the same. For example, the drydock, cargo tank internal, and internal structural examination intervals for salt water service ships are all twice within five years. Therefore, the net result of this change for these vessels is that the examination requirements as proposed in the NPRM are essentially the same as the examination requirements established in this rule. However, establishing three separate examinations enables the Coast Guard to recognize the additional levels of safety inherent in the design of, for example, a double hull tank barge with internally framed cargo tanks in fresh water service. These vessels will have a 10 year drydock interval, a five year cargo tank internal interval, and an internal structural interval of twice within five years.

(b) *Alternate internal examinations in lieu of drydocking.* The existing regulations and the NPRM both permitted alternate internal examinations in lieu of drydocking for some double hull barges in fresh water service. This rule eliminates alternate internal examinations in lieu of drydocking in favor of extended drydock examination intervals with intermediate internal structural examinations. Under existing regulations, a fresh water service double hull tank barge has a three year drydock interval. If an alternate internal examination is conducted at year three, the drydocking can be extended to year six. In this rule, the baseline fresh water service drydock interval is five years. As stated above, rather than permitting alternate internal examinations, this rule employs a scheme of lengthened drydock intervals with intermediate internal structural examinations. Therefore, the same fresh water service double hull tank barges will, under this rule, have a 10 year drydock interval and an internal structural examination interval of twice within five years.

(c) *Underwater surveys instead of alternate drydocking.* Although the NPRM permitted underwater surveys on passenger vessels, nautical school ships, or sailing school vessels, this interim final rule does not. No comments addressing underwater surveys on these vessels were received in response to the ANPRM or NPRM. However, the Coast Guard has determined the service of these vessels (carrying large numbers of people in passenger or passenger-like situations and frequently operating in confined, congested waters) are such that it is inappropriate to permit underwater surveys.

The NPRM also proposed alternate underwater surveys instead of alternate drydocking for tank vessels, cargo and miscellaneous vessels, and oceanographic research vessels, and limited this alternative to vessels of 15 years of age or less. This rule retains alternate underwater surveys for these vessels, but will permit continued participation in the underwater survey program for vessels older than 15 years. Approval for continued participation will be dependent upon a complete set of hull gaugings (indicating no appreciable hull deterioration), the results of the last drydock examination, and the recommendation of the Officer in Charge, Marine Inspection.

(d) *Examination of integral fuel tanks.* In examining the scope of a drydock examination in both the existing regulations and the NPRM, the Coast Guard determined that the important structural members on the inside of fuel tanks were not covered in the examination requirements. Therefore, in order to promote safety and to comply with the recommendations of the National Transportation Safety Board resulting from the sinking of the GLOMAR JAVA SEA (Recommendation M-84-58; Report number NTSB/MAR-84-08), the Coast Guard has included in this rule a requirement for the internal examination of integral fuel tanks.

The basic fuel tank interval will be five years with the examination to be accomplished concurrently with an internal structural examination. However, the fuel tanks need not be cleaned and internally examined if the Coast Guard marine inspector is able to determine by external examination that their general condition is satisfactory. There will be mandatory requirements for the internal examination of a representative sample of double-bottom fuel oil tanks, as follows: for vessels between 10 and 15 years of age, one double-bottom fuel oil tank; for vessels between 15 and 25 years of age, three double-bottom fuel oil tanks; and for vessels 25 years of age and older, one double-bottom fuel oil tank in way of each cargo hold/tank.

Under existing regulations (§§ 31.10-17(d), 71.30-10, 91.27-15, 167.15-25, 169.259, and 189.27-15) Coast Guard marine inspectors are not prohibited from making such tests and examinations as deemed necessary to be assured of the seaworthiness of the vessel. This permits marine inspectors to examine a vessel's fuel tanks. Additionally, the Load Line regulations (§ 42.09-30) and American Bureau of Shipping rules require the internal examination of fuel tanks. This fuel tank examination requirement has been structured to align with classification society rules and the requirement in 46 CFR 42.09-30. As a result, it should only have the impact of a new requirement on those vessels without a Load Line and not classed by the American Bureau of Shipping.

(e) *Separate examination intervals for aggregate fresh water/salt water service.* The NPRM proposed a separate set of examination intervals for those vessels which operated in fresh water at least six months in every 12 month period since the last drydock examination. This set of intervals for aggregate fresh water/salt water service veasels was in addition to a set of examination intervals for vessels operating in exclusive fresh water service and a set of examination intervals for those vessels operating in salt water more than six months in every 12 month period. This rule has eliminated the set of intervals for aggregate fresh water/salt water service. The fresh water service examination intervals established in this rule will be applicable to those vessels operating in fresh water at least nine months in any 12 month period. The salt water service examination intervals will be applicable to those vessels operating in fresh water less than nine months in any 12 month period.

(f) *Twice within a five year interval.* To ensure these rules are consistant with the drydock examination intervals currently under consideration internationally, an editorial change has been made to the regulations to reflect an examination interval of twice within any five year *period* in lieu of twice within a five year *cycle.*

All the examination intervals in this rule (drydock, internal structural, cargo tank internal, tailshaft, and fuel tank) are a multiple of five years which will maximize the incidence of different requirements coming due at the same time. This should reduce the out of service time of, and the economic impact on, inspected vessels. Additionally, several times during the life of a vessel, all five intervals will coincide and Coast Guard marine inspectors will be afforded the opportunity to conduct a complete assessment of the vessel's hull structure. The four year drydock interval for aggregate fresh water/salt water service vessels proposed in the NPRM does not lend itself to a similar coincidence of separate examinations for aggregate service vessels without imposing more frequent examinations than are permitted similar vessels in exclusive salt water service.

Tables 1 and 2 are provided for quick reference to the new examination intervals, as well as for comparison with the existing examination intervals. They list the existing and new examination intervals for each of the following examinations—drydock, internal structural, and cargo tank—for most categories of vessels.

TABLE 1.—COMPARISON OF EXISTING AND NEW SALT WATER SERVICE EXAMINATION INTERVALS IN YEARS [1]

	Tank Vessels—Subchapters D and I								Non-tank vessels Subchapters I, R and U		Passenger vessels Subchapter H		All wood hull vessels
	Single hull ships and barges	Double hull barges internal framed cargo tanks	Double hull barges external framed cargo tanks	Single hull barges independent cargo tanks	Single hull barges grade D & E cargoes	Double hull barges grade D & E cargoes	Single hull asphalt barges	Double hull asphalt barges	Ships and barges	Unmanned deck cargo barges	International voyage passenger vessels	Domestic voyage passenger vessels	Wood hull
Drydock:													
Existing	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	1.0	1.5	[2]
New	2.5	5.0	5.0	5.0	2.5	5.0	2.5	5.0	2.5	5.0	1.0	2.5	2.5
Internal structural:													
Existing	2.0	2.0	2.0	2.0	6.0	2.0	12.0	2.0	2.0	2.0	1.0	2.0	[3]
New	2.5	2.5	2.5	2.5	5.0	2.5	10.0	2.5	2.5	2.5	1.0	2.5	2.5
Cargo tank: [4]													
Existing	2.0	2.0	4.0	[4]	6.0	6.0	12.0	12.0					4.0
New	2.5	5.0	10.0	[4]	5.0	10.0	10.0	15.0					2.5

[1] A 2.5 year examination interval means a vessel must undego two examinations within any five year period. No more than three years may elapse between any two examinations.

[2] Existing dry dock interval for wood hull tank vessels is 4 years; existing drydock interval for wood hull passenger vessels is 18 months; and existing drydock interval for wood hull non-tank vessels is 2 years.

[3] Existing internal structural interval for wood hull tank vessels is 8 years; existing internal structural interval for wood hull passenger vessels is 18 months; and existing internal structural interval for wood hull non-tank vessels is 2 years.

[4] If carrying cargoes regulated under 46 CFR Part 38 or 46 CFR Subchapter 0 cargo tank internal examinations must be accomplished as specified in 46 CFR Parts 38 and 151 respectively.

TABLE 2.—COMPARISON OF EXISTING AND NEW FRESH WATER SERVICE EXAMINATION INTERVALS IN YEARS[1]

	Tank vessels—Subchapters D and I								Non-tank vessels Subchapters I, R and U		Passenger vessels Subchapter H		All wood hull vessels
	Single hull ships and barges	Double hull barges internal framed cargo tanks	Double hull barges external framed cargo tanks	Single hull barges independent cargo tanks	Single hull barges grade D & E cargoes	Double hull barges grade D & E cargoes	Single hull asphalt barges	Double hull asphalt barges	Ships and barges	Unmanned deck cargo barges	International voyage passenger vessels	Domestic voyage passenger vessels	Wood hull
Drydock:													
Existing	3.0	6.0	6.0	3.0	3.0	6.0	3.0	6.0	5.0	5.0	1.0	5.0	[2]
New	5.0	10.0	10.0	10.0	5.0	10.0	5.0	10.0	5.0	10.0	1.0	5.0	2.5
Internal structural													
Existing	2.0	2.0	2.0	2.0	6.0	2.0	12.0	2.0	2.0	2.0	1.0	2.0	[3]
New	5.0	2.5	2.5	2.5	5.0	2.5	10.0	2.5	5.0	2.5	1.0	5.0	2.5

TABLE 2.—COMPARISON OF EXISTING AND NEW FRESH WATER SERVICE EXAMINATION INTERVALS IN YEARS[1]—Continued

	Tank vessels—Subchapters D and I								Non-tank vessels Subchapters I, R and U		Passenger vessels Subchapter H		All wood hull vessels
	Single hull ships and barges	Double hull barges internal framed cargo tanks	Double hull barges external framed cargo tanks	Single hull barges independent cargo tanks	Single hull barges grade D & E cargoes	Double hull barges grade D & E cargoes	Single hull asphalt barges	Double hull asphalt barges	Ships and barges	Unmanned deck cargo barges	International voyage passenger vessels	Domestic voyage passenger vessels	Wood hull
Cargo tank:[4]													
Existing	2.0	3.0	6.0	[4]	6.0	6.0	12.0	12.0					4.0
New	5.0	5.0	10.0	[4]	5.0	10.0	10.0	15.0					2.5

[1] A 2.5 year examination interval means a vessel must undergo two examinations within any five year period. No more than three years may elapse between any two examinations.

[2] Existing drydock interval for wood hull tank vessels in 4 years; existing drydock interval for wood hull passenger vessels is 5 years; and existing drydock interval for wood hull non-tank vessels is 5 years.

[3] Existing internal structural interval for wood hull tank vessels is 8 years; existing internal structural interval for wood hull passenger vessels is 2 years; and existing internal structural interval for wood hull non-tank vessels is 2 years.

[4] If carrying cargos regulated under 46 CFR Part 38 or 46 CFR Subchapter O cargo tank internal examinations must be accomplished as specified in 46 CFR Part 38 and 151 respectively.

(g) *Effective dates.* In view of the changes discussed above, the Coast Guard considered whether to publish a final rule, an interim final rule, or a supplemental notice of proposed rulemaking. For the following reasons, publication of an interim final rule was considered most appropriate.

A prime concern of industry during this rulemaking was that the Coast Guard implement a program of extended inspection intervals as quickly as possible. It is estimated that the inspection intervals contained in these rules will save the maritime industry $26 million annually. Delaying the effective date by six months or more, to receive comments on a supplemental proposal containing the changes and publish a final rule, would cost industry $13 million or more.

Although the format of the inspection intervals has been changed, to provide more flexibility in handling inspections on differing types of vessels, the basic purpose of extending inspection intervals and providing for required inspections to coincide, has not changed. The adjustments made to proposed intervals are well within the scope of the proposal. The only feature that could be considered outside the scope of the proposal is the requirement for internal inspection of fuel tanks.

Consideration was given to separately publishing proposed inspection requirements for fuel tanks, however the basic feature of this rulemaking is to harmonize all structural inspections of a vessel. Since the fuel tanks are integral parts of the vessel structure, the required inspections for these tanks can best be considered as part of integrated inspection rules. The fact that the fuel tank inspection requirements in these rules are aligned with the existing requirements in the Load Line regulations and American Bureau of Shipping requirements for classification, should mean that including these requirements in this rulemaking will have little or no impact for many vessels. However, to provide notice to vessel owners, and an opportunity to respond to comments and make changes, if necessary, the provisions concerning internal inspection of fuel tanks will not become effective until 180 days after publication of this rule. We have requested that comments on these provisions be submitted within 90 days. In the unlikely event that serious concerns are raised, the effective date for these provisions can be suspended pending resolution of any problems brought to our attention.

Discussion of Comments

Nineteen comments generally supported the proposed regulations. Two comments suggested that the original period for submitting comments be extended from 30 to 60 days. The 30 day deadline was a printing error which was later corrected by an extension document published in the **Federal Register** (51 FR 20847; June 9, 1986).

One comment suggested that because the proposed examination requirements substantially treated all other vessels as equals, mobile offshore drilling units (MODUs) under Subchapter I–A of 46 CFR Chapter I and small passenger vessels under Subchapter T of 46 CFR Chapter I should be included in this rulemaking. The Coast Guard, however, intends to regulate these classes of vessels separately. Examination intervals for MODUs and small passenger vessels will be addressed in separate rulemakings under Coast Guard docket numbers 83–071 and 85–080 respectively.

One comment suggested that the discussion of comments in the NPRM was deficient in that only those comments which answered the specific questions contained in the ANPRM were discussed in the NPRM, other comments were not discussed. Though they may not have been discussed, all comments received were considered in developing the NPRM.

One comment noted that several public hearings would be held. As mentioned earlier in this preamble, no request for a public hearing was received and none were held.

One comment recommended that the NPRM be withdrawn for further study so that the differences between classification society and Coast Guard requirements could be resolved. The Coast Guard recognizes that these rules should be aligned, where appropriate, with those of the classification societies and has made efforts to do so. The Coast Guard has initiated a dialog with the American Bureau of Shipping to explore further efforts to align inspection intervals.

Nine comments recommended that the internal examination of cargo tanks under Subchapter D of 46 CFR Chapter I should not be included in the scope of either a drydock examination, underwater survey, or alternate internal inspection. Two comments recommended that the Coast Guard's current policy for Grade D and E cargoes, which permit a six year cargo tank internal examination interval, be retained. One comment suggested that a five year cargo tank internal examination interval be required to make it consistent with the drydock

interval. Four comments suggested that expanding the scope of drydocking, underwater surveys, and alternate internal inspections to include a cargo tank internal examination is inconsistent with the Coast Guard's intent to reduce the costs to the owners/operators, as stated in the preamble to the NPRM. They state that the alignment of cargo tank internal examination intervals with those for drydocking would increase the cargo tank examination interval. In turn, they state that this would result in an increase in gas freeing costs and reduce the amount of savings anticipated by the operators. One comment recommended the purpose for drydocking or underwater examinations instead of drydocking should be to confirm the conditions of the underwater portion of the hull and through hull fittings. They feel that internal examination of the cargo tanks does not require drydocking and that the intervals and scope of the cargo tank examinations should be addressed separately. Three comments state that the proposed rules presume that all vessels, excluding wooden vessels and those certificated under Subchapters I–A and T, are subject to the same risk of hull girder or tailshaft failure and, therefore, should have identical intervals. The Coast Guard agrees that the examination intervals in the NPRM do not adequately reflect the differences in vessel design and employment and that including examination of all cargo tanks in the scope of a drydock examination would create problems, particularly for tank barges. The examination intervals in the NPRM would have unnecessarily increased the frequency of cargo tank internal examination for many vessels, for example, from once every six years to twice every five years for vessels carrying Grade D and E products. To correct these problems, the Coast Guard has established three separate examinations to replace the all inclusive drydock examination: drydock, internal structural, and cargo tank internal, each with its own interval. Internal structural examinations will eliminate the need for alternate internal inspections in lieu of drydocking, as proposed in the NPRM for double-hull tanks barges in inland service.

Under this rule, a drydock examination consists of hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves. The basic drydock examination intervals are twice every five years for vessels in salt water service and once every five years for vessels in fresh water service. Exceptions to these basic drydock examination intervals are as follows:

(a) Passenger vessels on an international voyage have a drydock interval of one year, in order to comply with the provision of the Safety of Life and Sea Convention of 1974 (SOLAS).

(b) Double hull tank barges have drydock intervals of once every five years for salt water service and once every 10 years for fresh water service. A double hull provides an additional level of safety above that of a single hull. Additionally, a double hull permits a complete examination of the inside of the hull and the outside of the cargo tanks to be done during an internal structural examination. Extended drydock intervals, with periodic internal structural examinations, effectively replace the existing practice of alternate internal inspections in lieu of drydocking. Current regulations limit alternate internal inspections in lieu of drydocking to fresh water service barges. This rule extends this concept to salt water service vessels.

(c) Single hull tank barges with independent tanks have the same drydock intervals as double hull tank barges. Independent tanks provide the same level of safety and opportunity for internal examination of the hull as do double hulls.

(d) Wood hull vessels in fresh water service have a drydock interval of twice in five years, because fresh water accelerates rotting of wood hulls.

(e) Unmanned deck cargo barges have drydock intervals of once every five years in salt water service and once every 10 years in fresh water service. As with a double hull barge, access is available because no cargo is carried in the hull. Periodic internal structural examinations provide for an assessment of all structural members and of the inside of the outer hull.

Under this rule, an internal structural examination consists of an examination of the vessel while afloat or in a drydock and includes a examination of the vessel's main strength members, including the major internal framing, hull plating, voids, and ballast tanks but not the cargo and fuel oil tanks. The basic internal structural examination intervals are twice every five years for vessels in salt water service and once every five years for vessels in fresh water service. Exceptions to these basic intervals are as follows:

(a) Wood hull tank vessels have an internal structural examination interval of once every five years. While this interval is longer than the basic interval (twice every five years), an equivalent level of safety is achieved because of the double barrier (wood hull and metal tanks) between the water and cargo. Additionally, the unique construction of these vessel requires that the deck and tanks be removed in order to enable an internal structural examination. The cost associated with this type of examination is considerable.

(b) Passenger vessels on an international voyage have an internal structural examination interval of once every year in order to comply with the requirements of SOLAS.

(c) Single hull tank vessels in fresh and salt water service certificated for the carriage of Grade D and E products only or for the carriage of asphalt will have internal structural examination intervals of once every five years for Grade D and E products and once every 10 years for asphalt. Grade D and E products and asphalt provide a protective coating which inhibits corrosion. On single hull vessels, the major structural members are located in the cargo tanks and, as a result of this protective coating, are subject to less corrosive damage.

Under this rule, a cargo tank internal examination consists of an examination of the vessel while afloat or in a drydock and includes an examination of the internals of all cargo tanks. However, if the vessel is certificated to carry cargoes regulated under 46 CFR Part 38 or Subchapter O of 46 CFR Chapter I, cargo tank internal examinations must occur as specified in Part 38 or Subchapter O, respectively. The basic cargo tank internal examination interval for salt water service vessels is twice every five years and, for fresh water service vessels, once every five years. The exceptions to these basic intervals are as follows:

(a) For single hull tank vessels in fresh and salt water service which are certificated for the carriage of Grade D and E products only or the carriage of asphalt, the cargo tanks internal examination interval is five years for Grade D and E products and 10 years for asphalt. For single hull tank vessels, cargo tank internal examinations and internal structural examinations are one in the same. Therefore, cargo tank internal intervals are the same as the internal structural examination intervals.

(b) For double hull tank barges with internally framed cargo tanks, the cargo tank internal examination interval is five years for both fresh and salt water service. The fresh water service interval

is five years to coincide with the drydock interval. As these tanks are not in contact with the water, water salinity should have no effect on the examination interval. Therefore, the interval for both salt and fresh water service will be five years.

(c) For double hull tank barges with externally framed cargo tanks, the cargo tank internal examination interval is 10 years for fresh and salt water service. As these tanks are not in contact with the water, water salinity should have no effect on the examination interval. Additionally, the external framing permits these important structural members to be examined during the periodic internal structural examinations.

(d) For double hull tank barges certificated for the carriage of Grade D and E products or for asphalt, the cargo tank internal interval will be 10 years for Grade D and E products and 15 years for asphalt. A combination of the protective coating provided by the cargo and the access to the outside of the cargo tanks afforded by the double hull allow these intervals while maintaining an equivalent level of safety.

These cargo tank internal examination intervals represent an increase for all Subchapter D cargos except (1) single hull barges carrying Grade D and E products only (for these vessels the interval has been reduced from six to five years); (2) single hull barges carrying asphalt (for these vessels the interval has been reduced from 12 to 10 years); and (3) wood hull tank barges (for these vessels the interval has be reduced from once every four years to twice every five years). In each case, the interval has been reduced to stay in step with the drydock interval while maintaining an equivalent level of safety.

The only existing requirements for the internal examination of a vessel's fuel tanks are contained in 46 CFR 42.09-30. As a result of the capsizing and sinking of the GLOMAR JAVA SEA and to promote safety, the Coast Guard has included in this rule a requirement for the internal examination of integral fuel tanks. The basic fuel tank examination interval will be once every five years. However, the fuel tanks need not be cleaned and internally examined if the Coast Guard marine inspector is able to determine by external examination that their general condition is satisfactory. There will be mandatory requirements for the internal examination of a representative sample of double-bottom fuel oil tanks, as follows: For vessels between 10 and 15 years of age, one double-bottom fuel oil tank; for vessels between 15 and 25 years of age, three double-bottom fuel oil tanks; and for vessels 25 years of age and older, one double bottom fuel oil tank in way of each cargo hold/tank.

A total of nine comments recommended a five year drydock interval for vessels in salt water service. Two recommended five years for barges to align the regulations with International Maritime Organization (IMO) and Load Line drydocking requirements. One recommended a five year interval for barges due to their lack of underwater fittings and tailshafts. This comment further argued that drydockings should become a subsequent action to internal examinations, because keel blocks mask up to 10% of the bottom. Four comments recommended a five year drydocking interval for Subchapter I barges in salt water service. Two recommended five years for barges, because all of the interior spaces are available for examination. One recommended a five year interval for barges due to the benefits resulting from the use of cathodic protection, coatings, and multiple compartmentation. The Coast Guard agrees that unmanned deck cargo barges certificated under Subchapter I warrant separate consideration and has established (in § 91.40-3) a drydock interval of five years for barges in salt water service and 10 years for barges in fresh water service. Four comments recommended five years for self-propelled vessels less than 1,600 gross tons, suggesting that the increased interval would not eliminate or deter drydockings for repairs on an unscheduled basis as the need occurs. The Coast Guard feels that size is not a factor in determining examination intervals and that a drydock interval of twice within five years is necessary to ensure an adequate level of safety for these manned, single hulled vessels operating in salt water.

Three comments recommended a seven year drydock interval for vessels on the Great Lakes. Another recommended a six year interval with the option of extending the interval to seven years based upon the amount of time the vessel was actually in operation, the status of the maintenance during the layup, the water quality at the wet lay up berth, and the availability of a drydock facility. Three of the comments recognized that any increase in the drydock interval would be a step sideways without a corresponding increase in the Load Line drydock interval. Two suggested that the majority of damage to a vessel's hull can be detected every bit as effectively, and at a huge cost saving, by internal examination of double bottoms and tanks. An internal examination will indicate whether or not further underwater examination or examination on drydock is warranted. The Coast Guard does not consider these comments to be persuasive as to why Great Lakes vessels warrant a longer drydock interval than other fresh water service vessels. Nor does the Coast Guard feel that examination intervals should be eased based upon a vessel's actual number of underway days. However, the Coast Guard solicits further comment on this issue and documented evidence regarding damage discovered and repairs performed on Great Lakes vessels both during and between required inspections and drydockings.

One comment recommended a revision to the Load Line drydock requirements to allow alternate internal examinations in lieu of drydocking for double hull tank barges with limited Great Lakes Load Lines. Such a revision would align the load line drydocking requirements with those in 46 CFR Part 31. Changes to the Load Line regulations are outside the scope of this rulemaking. However, the Coast Guard has initiated a rulemaking project (CGD 86-013) to amend the Load Line regulations. Interested parties are invited to comment. Comment should be addressed to: Commandant (G-CMC/21), [CGD 86-013], U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

One comment recommended a 10 year drydock interval for fresh water service passenger vessels which operate six months or less out of the year. The Coast Guard does not agree that drydock intervals should be based upon a vessel's underway time and has retained the five year drydock examination interval for this class of vessel.

One comment objected to a one year drydock interval for passenger vessels on international voyages. It incorrectly stated that a passenger vessel on a route between Puget Sound and Canada is required to be drydocked yearly (international voyage drydock interval), while an identical vessel on a route between Puget Sound and Alaska would be required to be drydocked only twice every five years (domestic voyage drydock interval). However, existing regulation (in § 70.05-10) defines voyages between the contiguous states of the United States and Hawaii or Alaska or between Hawaii and Alaska as international voyages. The one year drydock interval for passenger vessels on international voyages remains unchanged in order to comply with the

provision of the International Safety of Life at Sea Convention, 1974 (SOLAS), to which the United States is a signatory.

Two comments recommended a four year drydock interval regardless of vessel design or exposure to salt or fresh water. The primary concern of these comments is the difficulty associated with maintaining accurate records of the amount of salt water service, which would be necessary to determine the applicable drydocking interval. Hull deterioration on metal-hulled vessels is reduced when operating in fresh water and thus there is less need for them to be drydocked as often as vessels operating in salt water. Any burden resulting from the recordkeeping requirements necessary to document fresh water service does not justify an increase in the drydocking frequency for fresh water service vessels.

One comment recommended that drydock intervals for vessels with both fresh and salt water service should be determined by pro-rating the actual amount of salt water service. One comment recommended a five year interval for vessels with an aggregate of fresh and salt water service. The Coast Guard has addressed this issue by redefining fresh water service in §§ 31.10–21, 71.50–3, 91.40–3, 167.15–30, 169.229 and 189.40–3. Fresh water service examination intervals will be applicable to those vessels operating in fresh water at least nine months in any 12 month period. The salt water service examination intervals will be applicable to those vessels operating in fresh water less than nine months in any 12 month period. Aggregate fresh water/salt water service examination intervals have been removed. The NPRM proposed a four year drydock interval for vessels that operated in fresh water at least six months in every 12 month period since the last drydock examination. All the examination intervals in this rulemaking are a multiple of five, which allows for a maximum coincidence of drydock, internal structural, cargo tank internal, tailshaft, and fuel tank examinations. A four year examination interval does not lend itself to a similar coincidence of separate examinations for aggregate service vessels without imposing more frequent examinations than are permitted similar vessels in exclusive salt water service.

Five comments recommended that the gravity cargo tank internal examination intervals contained in 46 CFR Part 151 be amended to align them with the proposed drydock intervals. One comment recommended that the Subchapter O gravity cargo tank internal examination intervals be amended so that they coincide with the drydock intervals for double hull barges. This comment recommended that the drydock/cargo tank internal examination intervals should be three years for inland salt water service, four years for inland aggregate fresh water/salt water service, and five years for inland fresh water service. The Coast Guard agrees that to the maximum extent feasible cargo tank examination intervals should coincide with drydock intervals. There is a separate rulemaking project (CGD81–087) which will address Part 151 gravity cargo tank internal examination intervals. One comment recommended that the Subchapter D cargo tank internal examination intervals be amended to align them with the drydock intervals. The Coast Guard agrees and has established (in § 31.20–23) cargo tank internal examination intervals which will maximize the coincidence of these examinations with drydock examinations for vessels carrying Subchapter D cargoes.

Two comments recommended that double hull barges in salt water service, not just those in inland service, should be allowed to undergo alternate internal inspections in lieu of drydockings. Inasmuch as the water in which the vessel is operating does not come in contact with the tank boundaries, the Coast Guard agrees that water salinity should not have an impact on which vessels should undergo alternate internal inspections in lieu of drydockings. One comment recommended that the definition of a double hull tank barge should include single hull barges with independent tanks with regard to alternate internal examinations in lieu of drydocking. The Coast Guard agrees that the additional level of safety afforded by independent tanks is similar to that of a double hull and, therefore, that these vessels should have similar drydock intervals. However, the concept of alternate internal inspection in lieu of drydocking has been retained in this rulemaking in the form of lengthened drydock intervals with intermediate internal structural examinations. Sections 31.20–23 and 91.40–3 establish drydock intervals for double hull barges and single hull barges with independent tanks of once every five years for salt water service and once every 10 years for fresh water service, and internal structural examinations of twice within five years for both fresh and salt water service.

A total of nine comments recommended that the classification societies be authorized to conduct one or more of the annual, drydock, or tailshaft examinations now conducted by Coast Guard marine inspectors. Two of these comments pointed out problems concerning the overseas inspection of liferafts and vessels by the Coast Guard. Seven of these comments recommended that inspection authority be delegated to the classification societies in order to avoid a duplication of effort that now exists between the Coast Guard and the classification societies and to make use of the classification societies' existing world-wide network. These suggestions are outside the scope of this rulemaking; however, the Coast Guard is aware of the problems stemming from overseas inspection and is developing solutions to these problems.

One comment recommended that the Coast Guard turn over all unmanned deck cargo barges inspection responsibilities (Certificate of Inspection and Drydock) to the classification societies. They suggested that there are no recorded items looked at during an annual inspection by the Coast Guard which are not also surveyed by the classification societies. If their recommended five year drydock interval for deck cargo barges is implemented, they suggested that a Coast Guard drydock examination would be only a duplication of the classification societies' drydock survey. However, this recommendation is outside the scope of this rulemaking.

One comment recommended that the Coast Guard allow the annual inspection of Subchapter I barges to be conducted by the vessel owner's personnel or by a third party employed by the owner. They argued that the principle of self inspection or self certification, as being considered for Outer Continental Shelf (OCS) fixed facilities (CGD 84–098a), has considerable merit for Subchapter I barges. The Coast Guard finds that Subchapter I barges encompass too broad a category of vessels for such a liberal inspection policy. Barges in this category are employed in services ranging from icebreaking to accommodating 100 or more personnel.

Five comments recommended that Subchapter I barges be authorized to undergo underwater surveys for all drydockings, rather than just alternate drydockings. One comment recommended that deck cargo barges not be required to undergo regularly scheduled drydock examinations. They recommended that cathodic protection, coatings, and a reasonable maintenance program have proven effective at protecting hulls and that the condition of the entire hull, except submerged hull plate, can be determined during an

internal examination. The Coast Guard position is that Subchapter I barges need to undergo drydock examinations. Unmanned deck cargo barges, although single hulled, warrant special consideration, because no cargo is carried in the hull. Also, all internal structural members and the inside of the outer hull are always available for inspection. Therefore, the Coast Guard has established (in § 91.40–3) drydock examination intervals for unmanned/non-permissively manned deck cargo barges of once every five years for salt water service and once every 10 years for fresh water service and internal structural examinations of twice within five years for both fresh and salt water service.

Twenty-seven comments addressed the issue of extensions of examination intervals. Four comments from the Great Lakes recommended delegation of drydock extension authority to Commander, Ninth Coast Guard District. Seven other comments recommended that extension authority be delegated to the Officer in Charge, Marine Inspection (OCMI). Thirteen comments recommended that the current extension authority be retained. One comment recommended District Commanders be given the authority to match any extension granted by the classification societies. One comment recommended than District Commanders and OCMIs be given a 90 day extension authority. The current regulations reserve in the Commandant all drydock extension authority. However, the Commandant has delegated authority to grant drydock extensions to the District Commanders and to the OCMIs, under certain conditions. District Commanders may extend the drydock interval requirement for any vessel for a period of up to one year. OCMIs may extend the drydock interval for barges and all vessels of less than 100 gross tons for a period of up to one year. For all other vessels, the OCMIs may extend the interval for a period of up to six months. Those suggesting District Commander and OCMI extension authority stated that the proposed longer examination intervals do not decrease scheduling problems; that a six month extension authority would enable harmonization with classification society extensions; that drydock availability problems would continue to arise; that the Commandant approval would be time consuming and burdensome and probably would defeat the purpose of asking for a variance; that extension decisions should be made by the marine inspector based on personnel and vessel safety considerations and not made at a Headquarters level based on policy considerations; and that economic and safety considerations overshadow the need for consistency. The Coast Guard recognizes that, for some regional segments of the industry, the granting of extensions has evolved to the point of being automatic, resulting in an inconsistent national policy. Retention of extension authority in Commandant (G–MVI) will restrict extensions to those cases truly warranting them, while at the same time ensuring consistency. The new examination intervals provide vessel owners and operators with the necessary flexibility to schedule examinations without necessitating extensions.

Seven comments recommended that the Certificate of Inspection (COI) interval be aligned with the proposed drydock intervals. Five comments also recommended that major machinery, boiler, and pressure vessel inspection intervals be aligned with the proposed drydock intervals. Their major concern is that each of the mentioned inspections requires the vessel to be taken out of service at considerable cost to the owner/operator. By aligning all such inspection intervals, the cost associated with loss of vessel service could be reduced without any reduction in safety. Two of the comments recommended that OCMIs be authorized to extend either the COI interval or the major machinery inspection intervals to effect this alignment. COI and major machinery inspection intervals are not within the scope of this rulemaking. However, an IMO diplomatic conference will be held in 1988 to consider the alignment of the inspection intervals covering the International Convention for the Prevention of Pollution from Ships 1973, SOLAS, and the Load Line Convention. Upon completion of this conference, the Coast Guard will consider the possibility of initiating a legislative proposal necessary to effect this alignment.

Eleven comments recommended that the 15 year age restriction on vessels allowed to undergo underwater surveys be eliminated. They stated: that the age restriction is discriminatory and arbitrary; that hull gaugings, vessel condition, maintenance programs, cathodic protection, and coatings, rather than age, are the keys to a vessel's suitability to undergo an underwater survey; that an age restriction removes the incentive to maintain a vessel and penalizes the operator who does maintain a vessel; that keel blocks can obscure as much as 10% of the underwater body, while the entire hull can be observed during an underwater survey; and that the Coast Guard's underwater survey program for mobile offshore drilling units (MODUs) does not include an age restriction and that these vessels are no less susceptible to damage than a typical barge. One comment recommended a 30 year age restriction on Great Lakes vessels allowed to undergo underwater surveys, suggesting that the less hostile environment of the Great Lakes warrants the change. The Coast Guard agrees that hull gaugings, vessel condition, maintenance programs, cathodic protection, and coatings, are the important factors in determining a vessel's suitability to undergo an underwater survey. Therefore, §§ 31.10–21(d), 91.40–3(d), and 189.40–3(e) have been amended to permit continued participation in the underwater survey program by vessels older than 15 years. Approval for continued participation by vessels older than 15 years will be dependant upon a complete set of hull gaugings (indicating no hull deterioration), the results of the last drydock examination, and the recommendation of the Officer in Charge, Marine Inspection.

Two comments took exception to the proposed requirement for gas freeing 75% of the vessel during an underwater survey. One comment recommended that, for vessel stability and time reasons, either a one or a five year window be provided for the gas freeing and subsequent internal inspection of the vessel. The cleaning, gas freeing, and subsequent inspection of 75% of the internals in way of the underwater body was a guideline published in the preamble to the NRPM rather than a proposed regulatory requirement. This guideline was included to emphasize the similarities between an underwater survey and a drydock examination. In this rule the scope of an underwater survey and a drydock examination (in §§ 31.10–20, 91.40–1, and 189.40–1)) have been amended by limiting them to an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves. Separate requirements and intervals (in §§ 31.10–21, 71.50–3, 91.40–3, 167.15–30, 169.229 and 189.40–3) have been added for internal structural examinations. An internal structural examination includes an examination of the vessel's main strength members, including major internal framing, hull plating, voids, and ballast tanks and will normally require the cleaning and gas freeing of 75% or more of the internals. The Coast Guard expects that in most situations the

internal structural examination will be conducted before or at the same time as the underwater survey.

Two comments requested that the underwater survey requirement to make sea valves available for internal inspection be eliminated. They stated that the dismantling of the valves would compromise the watertight integrity of the vessel; sea valves need only be examined externally during an underwater survey and internally during a drydocking; and test operating the valves or an air test for tightness together with an external examination should alert an inspector to any potential problems. Although the preamble to the NPRM discusses the examination of sea valves from inside the vessel, the proposed regulations require only that, when application for an underwater survey is made, it include "the means that will be provided for examining the sea chests, sea valves, and other through-hull fittings." This wording provides the approval authority with the latitude to accept a proposed alternative method of examination or to require an internal examination. However, it is envisioned that the Coast Guard will continue to require the internal examination of sea valves and encourages vessel owners and operators intending to participate in the underwater survey program to provide custom prefabricated blanks for all through hull fittings.

Two comments recommended that underwater survey water clarity restrictions are unnecessary. One noted that an underwater survey conducted in New York Harbor produced excellent results. The other recommended that underwater surveys can be conducted with adequate results in almost any environment with present day equipment, the presence of poor visibility would only add more diving time and costs for the owner. However, conducting an underwater survey in poor visibility could adversely affect the intent of the program (that it be equivalent to a drydock examination) and the safety of the ship. If water clarity conditions are unacceptable, the vessel owner would be given the option of either moving the ship to a location where there is good visibility or drydocking the ship.

Five comments recommended that the Commandant (G-MVI) would not be the best final underwater survey approval authority. They stated that OCMIs were a more logical approval authority because they would have a first hand knowledge of local conditions; that OCMIs would have the ability to inspect the vessel and discuss the survey procedures with the vessel owner before approval; and that decision making at the Headquarter's level would require the OCMI's input anyway. The Coast Guard agrees and has placed the underwater survey approval authority with the Officer In Charge, Marine Inspection.

One comment recommended that nothing would be gained by requiring a vessel to be at a light draft during an underwater survey. They recommended that the submersed side shell can be as effectively examined by video equipment, as any other portion of the underwater body. Although the preamble to the NPRM discusses underwater survey guidelines which would require a vessel to be at light draft, the regulation only requires that the application for the survey include the condition of the vessel and the anticipated draft of the vessel at the time of the survey. This wording provides the approval authority with the latitude to decide if the proposed draft is acceptable without necessitating an artificially light draft.

One comment recommended that self-propelled dredges be allowed to conduct an underwater survey instead of alternate drydockings. This rulemaking (in § 91.40-3(c)) provides for alternate underwater surveys instead of drydocking for this class of vessel.

Two comments objected to the quarterly lubrication oil analysis interval, which was proposed as necessary to avoid tailshaft examinations on vessels fitted with oil lubricated tailshaft bearings. Both comments recommended a six month interval. One suggested that a quarterly interval would be a cumbersome requirement for vessels in foreign trade due to logistical problems. The other noted that their experience has shown that a six month interval would be adequate. The Coast Guard agrees that a six month interval would provide an adequate level of safety and has incorporated this suggestion into the regulations (in § 61.20-17(d)(2)).

Two comments requested assurance that the tailshaft examination requirements would not apply to vessels on the Great Lakes. The Coast Guard affirms that the tailshaft examination intervals in these regulations apply only to ocean and coastwise service (§ 61.20-15).

One comment recommended that the basic tailshaft examination interval be changed to three years to align it with a proposed change to American Bureau of Shipping rules. The Coast Guard believes it is in the best interest of industry, the American Bureau of Shipping, and the Coast Guard to have tailshaft and drydock examination intervals which coincide. The intervals established in this rule would allow for this, a three year interval would not. The Coast Guard has brought this comment to the attention of the American Bureau of Shipping.

Two comments recommended revisions to the proposed rules to clarify the Coast Guard's intent with regard to the provisions which must be met by vessels with oil lubricated tailshaft bearings when the propeller is fitted to the shaft by means of a flange. Their concern was to avoid having to draw the shaft for examination. One comment suggested drawing the shaft, with the propeller undisturbed, to expose the forward end of the shaft at the propeller boss at five year intervals. Also, it suggested removing the propeller and drawing the shaft to expose the shaft bearing at 10 year intervals. The other comment recommended nondestructive testing of the bolts and flange fillet only when opened out for overhaul or repairs. The Coast Guard agrees that the provisions in the NPRM for tailshafts with oil lubricated bearings where the propeller is fitted to the shaft by means of a coupling flange were confusing and has (in § 61.20-17(d)(4)) clarified this requirement. This provision now requires that, for tailshafts with a propeller fitted to the shaft by means of a coupling flange, whenever the propeller coupling bolts are removed or the flange radius made available in connection with overhaul or repairs, they be nondestructively tested.

Two comments recommended that the regulations should contain language specifically authorizing one year extensions of the tailshaft examination intervals to align them with the classification society rules. However, the Coast Guard considers the provisions for tailshaft examination extensions contained in the regulations to be sufficient when coupled with the flexibility afforded by the examination intervals.

One comment recommended that the basic tailshaft examination interval be five years. The Coast Guard agrees and has incorporated this suggestion with one exception. Vessels with a single non-corrosion protected tailshaft not designed to reduce stress concentrations will have an examination interval of twice within five years. A single unprotected tailshaft does not provide the same level of safety as tailshafts protected from corrosion or multiple tailshafts. Therefore, the examination interval for this type of tailshaft remains unchanged.

One comment questioned the intent of §§ 71.50–3(e) and 91.40–3(e) in the NPRM (which appear as §§ 71.50–3(g) and 91.40–3(e) in this rule). These sections, as well as the similar sections in Parts 31, 167, 169, and 189, require any vessel which has missed an inspection due date because it was on a voyage, to undergo the required inspection immediately upon completion of the voyage, whether the voyage ends domestically or overseas.

Ten comments addressed the proposed requirement for vessels with Load Line Certificates to carry shell expansion plans. All ten recommended that a more reasonable requirement would be to require that the plans be made available to the marine inspector only at the time of drydocking. Eight comments recommended that it is virtually impossible to maintain plans on board barges. The Coast Guard feels that requiring these plans to be maintained onboard will ensure the plans availability at unscheduled drydockings but, agrees that barges often do not have a suitable place in which to store them. Therefore, §§ 31.10–22, 71.50–5, 91.40–5, 167.15–35, 169.233 and 189.40–5 require that barges need only make the plans available at the time of inspection. Two comments recommended that a requirement for plans showing the vessels scantlings would be more appropriate and flexible than requiring shell expansion plans. The Coast Guard agrees a requirement for plans showing the vessel's scantlings is more reasonable and has incorporated this suggestion in §§ 31.10–22, 71.50–5, 91.40–5, 167.15–35, 169.233, and 189.40–5.

Two comments recommended that the requirement to notify the OCMI of all drydockings be replaced by a requirement to notify whenever inspected vessels are docked for Certificate of Inspection, Load Line renewal, or damage repairs. The required notification, as drafted, will allow the OCMI to ascertain the reasons for drydocking and, in those cases where the condition or age of the vessel warrants, to conduct an examination to determine what is necessary to make the vessel seaworthy and come within the provisions of the regulations.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291. They are considered significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) because of the possible safety implications of extending the drydock and tailshaft examination intervals. The Coast Guard has determined that extending the intervals between these examinations will not compromise safety. This determination is based on the improved hull coatings and corrosion prevention methods used on present day vessels. In addition, the Coast Guard has granted, on a case-by-case basis under the present regulations, six month drydock extensions to give vessels flexibility in scheduling the examinations. There is no indication that these longer intervals have degraded safety. Accordingly, a regulatory evaluation has been prepared and placed in the rulemaking docket.

The basis for estimating the economic impact was developed from responses to the questions posed in the ANPRM concerning the costs for vessels to undergo a drydock and tailshaft examination. None of the comments to the NPRM contained cost figures. Most of the information received in response to the ANPRM pertained to the cost of examination for tankers above 20,000 DWT and tank barges. Though some information was received concerning other vessel types, there was not enough to establish general class costs for these vessels. Consequently, the information received on tankers and tank barges was interpolated to determine the costs for all vessels.

These regulations allow the use of underwater surveys instead of alternate drydockings for all salt water service vessels with a 2.5 year drydock interval and for all fresh water service vessels with a five year drydock interval. Vessel owners should consider requesting approval of underwater surveys where there is potential savings of time or expense. The Coast Guard will publish guidelines for underwater examinations which, among other things, will include requirements that rudder and bearing clearances must be obtained, sea valves must be made suitable for inspection from inside the vessel, the underwater body must be suitably marked, and the vessel must be at a suitably light draft. These guidelines will be published as a Navigation and Vessel Inspection Circular (NVIC).

The Coast Guard has an experimental program whereby certain vessels have been allowed to substitute an underway survey for a drydocking; 15 vessels are participating. Experience under this program, using the available techniques and equipment, indicates that poor water quality (turbidity and current), such as that encountered in many U.S. ports frequently leads to unacceptable results. Improvements in techniques or equipment may make this less of a problem and there are locations where suitable results can be achieved. No limitations or conditions on how the survey is conducted are imposed by the rules. The rules are performance oriented, with the decision as to the quality and thoroughness of the resulting inspection vested in the judgment of the local Officer in Charge, Marine Inspection.

Because of the Coast Guard's limited experience with underwater surveys, the varying circumstances under which an underwater survey may be considered instead of drydocking, and the developing technology in this field, the Coast Guard has not attempted to assess the costs and benefits attributable to underwater surveys. The use of such surveys is entirely optional, and, under some circumstances, may result in considerable cost savings, both in direct drydocking expense and in vessel operating time.

The potential benefits are greatest for vessels which must travel long distances to the drydock and least for vessels which can be conveniently drydocked. Experience to date indicates that, with existing technology, the underwater survey itself consumes at least the same amount of time as drydocking.

Based on this information, it is estimated that implementation of these regulations will result in an annual savings to the marine industry of 26 million dollars (in 1986 dollars). This translates to a present value of 264 million dollars using a discount rate of 10% (also in 1986 dollars). Savings will be realized by all vessels except wooden hull vessels in fresh water service, wooden hull tank vessels, and single hull tank barges certificated only for the carriage of Grade D and E cargos.

The increase in costs for wooden hull vessels in fresh water service, and wooden hull tank vessels is a result of this rulemaking establishing shorter drydock intervals for these vessels. (The Coast Guard has identified a total of five freight ships, three tank ships, and one tank barge from these categories.) The increase in cost to these vessels is less than $1000 per year per vessel.

The increase in the cost for single hull tank barges certificated only for the carriage of Grade D and E cargos is a result of this rulemaking establishing shorter cargo tank internal examination interval for these vessels. The Coast Guard has identified 431 tank barges in this category. The increase in cost to these vessels is significantly less than $1000 per year per vessel and, based on this, the Coast Guard has determined that no further evaluation is necessary.

One comment to the NPRM suggested that the method used for calculating the

economic savings was not included in the preamble and that this failure cast serious doubt upon the quality of work. The methodology used in developing the economic savings estimated in the NPRM was contained in the separate (Draft) regulatory evaluation referenced in the preamble to the NPRM, and in the final regulatory evaluation included in the docket.

As indicated above, the regulatory evaluation estimated that the economic impact of the regulations would result in an annual savings of $26 million (in 1986 dollars). This is a decrease of $3 million from that estimated in the draft regulatory evaluation. This difference in estimated economic savings is primarily attributable to a change in vessel population data. The draft regulatory evaluation was based on cost figures using an inspected vessel population of 8,216 ships and barges. The final regulatory evaluation is based on cost figures using vessel population data from an updated data base resulting in a more accurate vessel population of 6,590 ships and barges.

Additionally, this rule replaces the NPRM's all inclusive drydock examination with three separate examinations (drydock, cargo tank internal, and internal structural) each with its own interval. This change resulted in lower cost figures for this rulemaking action due to the use of different examination intervals on those vessels where it was warranted. The longer examination intervals tend to increase the estimated economic benefit.

The regulatory evaluation may be inspected or copied at the location referred to in **ADDRESSES**. Copies may also be obtained by contacting LCDR Geoffrey D. Powers at (202) 267-1045.

Environmental Assessment

The Coast Guard has assessed the environmental impacts of these regulations and has determined they will have no significant impact.

Paperwork Reduction Act

These regulations contain information collection requirements in the following sections of 46 CFR Title 1:

§ 31.10-21
§ 71.50-5
§ 91.40-5
§ 169.233
§ 189.40-5
§ 31.10-22
§ 91.40-3
§ 167.15-35
§ 189.40-3

They have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned the OMB control number 2115-0554.

Regulatory Flexibility Act

These regulations would affect all companies that own or operate vessels within the scope of this rulemaking, some of which may be small entities. The rules apply to all inspected vessels, except small passenger vessels and mobile offshore drilling units. The rules will provide an economic benefit to almost all or these vessels as the examination intervals are generally being extended beyond the current requirements. The Coast Guard estimates the rules will save those vessels which could be considered a small entity as much as $2,500 annually. There will be an increase in the cost for single hull tank barges certificated for the carriage of Grade D and E cargos in salt water service only, because the regulations shorten the cargo tank examination interval for these vessels. The Coast Guard has identified 11 tank barges in this category. The increase in cost to these vessels is estimated to be $40 per year.

The Coast Guard does not consider this economic impact to be significant. Consequently the Coast Guard certifies, under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine safety, Tank vessels.

46 CFR Part 61

Marine safety, Tests and inspections, Vessels.

46 CFR Part 71

Foreign trade, Law enforcement, Marine safety, Passenger vessels, Reporting requirements.

46 CFR Part 91

Cargo vessels, Law enforcement, Marine safety, Reporting requirements.

46 CFR Parts 167 and 169

Fire protection, Marine safety, Reporting requirements, School vessels.

46 CFR Part 189

Marine safety, Oceanographic vessels.

For the reasons set out in the preamble, Title 46, Chapter I of the Code of Federal Regulations is amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

2. By revising § 31.10-20 to read as follows:

§ 31.10-20 Definitions relating to hull examinations—T/B ALL.

As used in this part—

(a) "Drydock examination" means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

(b) "Internal structural examination" means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo or fuel oil tanks.

(c) "Cargo tank internal examination" means an examination of the vessel while afloat or in drydock and consists of an examination of the internals of all cargo tanks; except, if the vessel is certificated to carry cargoes regulated under Part 38 or Subchapter O of this chapter, the cargo tank internal examination must be accomplished as specified in Parts 38 and 151 of this chapter respectively.

(d) "Underwater survey" means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

3. By adding a new § 31.10-21 to read as follows:

§ 31.10-21 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals—TB/ALL.

(a) Except as provided for in paragraphs (b) through (f) of this section, each tank vessel must undergo drydock, internal structural, and cargo tank internal examinations as follows:

(1) Vessels that operate in salt water must be inspected in accordance with the intervals set forth in Table 31.10-21(a). Where Table 31.10-21(a) indicates a 2.5 year examination interval, it means a vessel must undergo two examinations within any five year period. No more than three years may elapse between any two examinations.

TABLE 31.10-21(A).—SALT WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing (1)	Double hull barge with external framing (2)	Single hull barge with independent tanks (3)	Wood hull ship and barge	Single hull ship and barge grade D and E cargoes only (4)	Double hull barge grade D and E cargoes only (5)	Single hull asphalt barge (6)	Double hull asphalt barge (7)
Drydock	2.5	5.0	5.0	5.0	2.5	2.5	5.0	2.5	5.0
Internal structural	2.5	2.5	2.5	2.5	5.0	5.0	2.5	10.0	2.5
Cargo tank internal	2.5 or as specified in Part 38 or 151 as applicable	5.0 or as specified in Part 38 or 151 as applicable	10.0 or as specified in Part 38 or 151 as applicable	10.0 or as specified in Part 38 or 151 as applicable	2.5 or as specified in Part 38 or 151 as applicable	5.0	10.0	10.0	15.0

Note:
(1) Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
(2) Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms, and other similar spaces.
(3) Applicable to single hull tank barges with independent cargo tanks where the cargo tank is not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
(4) Applicable to single hull tank barges certificated for the carriage of Grade D and E cargos only.
(5) Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of Grade D and E cargos only.
(6) Applicable to single hull tank barges certificated for the carriage of asphalt only.
(7) Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.

(2) Vessels that operate in fresh water at least nine months in every 12 month period since the last drydock examination must be examined in accordance the intervals set forth in Table 31.10-21(b). Where Table 31.10-21(b) indicates a 2.5 year examination interval, it means a vessel must undergo two examinations within any five year period. No more than three years may elapse between any two examinations.

TABLE 31.10-21(B).—FRESH WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing (1)	Double hull barge with external framing (2)	Single hull barge with independent tanks (3)	Wood hull ship and barge	Single hull ship and barge grade D and E cargoes only (4)	Double hull barge grade D and E cargoes only (5)	Single hull asphalt barge (6)	Double hull asphalt barge (7)
Drydock	5.0	10.0	10.0	10.0	2.5	5.0	10.0	5.0	10.0
Internal structural	5.0	2.5	2.5	2.5	5.0	5.0	2.5	10.0	2.5
Cargo tank internal	5.0 or as specified in Part 38 or 151 as applicable	5.0 or as specified in Part 38 or 151 as applicable	10.0 or as specified in Part 38 or 151 as applicable	10.0 or as specified in Part 38 or 151 as applicable	2.5 or as specified in Part 38 or 151 as applicable	5.0	10.0	10.0	15.0

Note:
(1) Applicable to double hull tank barges (double sides, ends,and bottoms) when the structural framing is on the internal tank surface.
(2) Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms and other similar spaces.
(3) Applicable to single hull tank barges with independent cargo tank where the cargo tanks is not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
(4) Applicable to single hull tank barges certificated for the carriage of Grade D and E cargos only.
(5) Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of Grade D and E cargos only.
(6) Applicable to single hull tank barges certificated for the carriage of asphalt only.
(7) Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.

(b) If, during an internal structural examination, cargo tank internal examination, or underwater survey, damage or deterioration to the hull plating, structural members, or cargo tanks is discovered, the Officer in Charge, Marine Inspection, may require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(c) Vessels less than 15 years of age (except wooden hull vessels) that are in salt water service with a 2.5 year

drydock interval (as indicated in Table 31.10–21(a) of this section) or that are in fresh water service with a five year drydock interval (as indicated in Table 31.10–21(b) of this section) may be considered for an underwater survey instead of alternate drydock examinations, provided the vessel is fitted with an effective hull protection system. Vessel owners or operators must apply to the Officer in Charge, Marine Inspection, for approval of underwater surveys instead of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedure to be followed in carrying out the underwater survey.

(2) The location where the underwater survey will be accomplished.

(3) The method to be used to accurately determine the diver location relative to the hull.

(4) The means that will be provided for examining sea chests, sea valves, and other through-hull fittings.

(5) The means that will be provided for taking shaft bearing clearances.

(6) The condition of the vessel, including the anticipated draft of the vessel at the time of the survey.

(7) A description of the hull protection system.

(d) Vessels otherwise qualifying under paragraph (c) of this section, that are 15 years of age or older may be considered for continued participation in the underwater survey program on a case-by-case basis, if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for continued participation to Commandant (G–MVI);

(2) During the vessel's next drydocking after the request is submitted, no appreciable hull deterioration is indicated as a result of a complete set of hull gaugings; and

(3) The results of the hull gauging and the results of the Coast Guard drydock examination together with the recommendation of the Officer in Charge, Marine Inspection, are submitted to Commandant (G–MVI) for final approval.

(e) Each vessel which has not met with the applicable examination schedules in paragraph (a) through (d) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

(f) The Commandant (G–MVI) may authorize extensions to the examination intervals specified in paragraph (a) of this section.

4. By adding a new § 31.10–22 to read as follows:

§ 31.10–22 Notice and plans required.

(a) The master, owner, operator, or agent of the vessel shall notify the Officer in Charge, Marine Inspection, whenever the vessel is to be drydocked regardless of the reason for drydocking.

(b) Each vessel, except barges, that holds a Load Line Certificate must have on board a plan showing the vessel's scantlings. This plan must be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, internal structural examination, cargo tank internal examination, or underwater survey or whenever repairs are made to the vessel's hull.

(c) Each barge that holds a Load Line Certificate must have a plan showing the vessel's scantlings. The plan need not be maintained on board the barge but must be made available to the Coaat Guard marine inspector whenever the barge undergoes a drydock examination, internal structural examination, cargo tank internal examination or underwater survey or whenever repairs are made to the barge's hull.

5. By adding a new § 31.10–24 to read as follows:

§ 31.10–24 Fuel oil tank examinations— T/ALL.

(a) Each integral fuel oil tank is subject to inspection as provided in this section. The owner or operator of the vessel shall have the tanks cleaned out and gas freed as necessary to permit internal examination of the tank or tanks designated by the marine inspector. The owner or operator shall arrange for an examination of the fuel tanks of each vessel during an internal structural examination at intervals not to exceed five years.

(b) Integral non-double-bottom fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(c) Double-bottom fuel oil tanks on vessels less than 10 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(d) All double-bottom fuel oil tanks on vessels 10 years of age or older but less than 15 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(e) All double-bottom fuel oil tanks on vessels 15 years of age or older but less than 25 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward, one amidships, and one aft double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(f) All double-bottom fuel oil tanks on vessels 25 years of age or older need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one double-bottom fuel oil tank in way of each cargo tank, and by external examination of all other double-bottom fuel oil tanks, that the general condition of the tanks is satisfactory.

PART 61—[AMENDED]

6. The authority citation for Part 61 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

7. By revising § 61.20–17 to read as follows:

§ 61.20–17 Examination intervals.

(a) Except as provided in paragraphs (b) through (e) of this section, each tailshaft on a vessel must be examined twice within any five year period. No more than three years may elapse between any two tailshaft examinations.

(b) Tailshafts on vessels fitted with multiple shafts must be examined once every five years.

(c) Tailshafts fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft, must be examined once every five years if they are constructed or fitted with a taper, keyway, and propeller designed in accordance with the American Bureau of Shipping standards to reduce stress concentration or are fitted with a flanged propeller.

(d) Tailshafts with oil lubricated bearings are not required to be examined—

(1) If tailshaft bearing clearance readings are taken whenever the vessel undergoes a drydock examination or underwater survey;

(2) If an analysis of the tailshaft bearing lubricating oil is performed semi-annually; and

(3) If—

(i) For tailshafts with a taper and a keyway, the propeller is removed and the taper and keyway are

nondestructively tested at intervals not to exceed five years; or

(ii) For tailshafts with a propeller fitted to the shaft by means of a coupling flange, the propeller coupling bolts and flange radius are nondestructively tested whenever they are removed or made accessible in connection with overhaul or repairs.

(e) Tailshafts on mobile offshore drilling units are not subject to examination intervals under paragraphs (a) through (c) of this section if they are—

(1) Examined during each regularly scheduled drydocking; or

(2) Regularly examined in a manner acceptable to the Commandant (G-MVI).

8. By revising § 61.20-18 to read as follows:

§ 61.20-18 Examination requirements.

(a) Each tailshaft must be drawn and visually inspected at each examination.

(b) On tailshafts with a taper, keyway, and propeller designed in accordance with American Bureau of Shipping standards to reduce stress concentrations, the forward ⅓ of the shaft's taper section must be nondestructively tested in addition to a visual inspection of the entire shaft.

(c) On tailshafts with a propeller fitted to the shaft by means of a coupling flange, the flange, the fillet at the propeller end, and each coupling bolt must be nondestructively tested in addition to a visual inspection of the entire shaft.

9. By revising § 61.20-21 to read as follows:

§ 61.20-21 Extension of examination interval.

The Commandant (G-MVI) may authorize extensions of the interval between tailshaft examinations.

PART 71—[AMENDED]

10. The authority citation for Part 71 is revised to read as follows and all other authority citations in the part are removed.

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46(b).

11. By revising § 71.50-1 to read as follows:

§ 71.50-1 Definitions relating to hull examinations.

As used in this part—

(a) "Drydock examination" means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

(b) "Internal structural examination" means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo or fuel oil tanks.

12. By adding a new § 71.50-3 to read as follows:

§ 71.50-3 Drydock and internal structural examination intervals.

(a) Each vessel making international voyages must undergo a drydock and internal structural examination once every 12 months.

(b) Except as provided in paragraphs (c) through (f) of this section, each vessel not making international voyages must undergo a drydock and internal structural examination as follows:

(1) Vessels that operate in salt water must undergo two drydock and two internal stuctural examinations within any five year period. No more than three years may elapse between any two examinations.

(2) Vessels that operate in fresh water at least nine months in every 12 month period since the last drydock examination must undergo drydock and internal structural examinations at intervals not to exceed five years.

(c) Vessels with wooden hulls must undergo two drydock and two internal structural examinations within any five year period regardless of the type of water in which they operate. No more than three years may elapse between any two examinations.

(d) If, during an internal structural examination, damage or deterioration to the hull plating or structural members is discovered, the Officer in Charge, Marine Inspection, may require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(e) Each vessel which has not met the applicable examination schedules in paragraphs (a) through (d) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

(f) The Commandant (G-MVI) may authorize extensions to the examination intervals specified in paragraph (a) through (c) of this section.

13. By revising § 71.50-5 to read as follows:

§ 71.50-5 Notice and plans required.

(a) The master, owner, operator, or agent of the vessel shall notify the Officer in Charge, Marine Inspection, whenever the vessel is to be drydocked, regardless of the reason for drydocking.

(b) Each vessel, except barges, that holds a Load Line Certificate must have on board a plan showing the vessel's scantlings. This plan must be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination or internal structural examination or whenever repairs are made to the vessel's hull.

(c) Each barge that holds a Load Line Certificate must have a plan showing the barge's scantlings. The plan need not be maintained on board the barge but must be made available to the Coast Guard marine inspector whenever the barge undergoes a drydock examination or internal structural examination, or whenever repairs are made to the barge's hull.

14. By adding a new Subpart 71.53 to read as follows:

Subpart 71.53—Fuel Oil Tank Examinations

§ 71.53-1 When required.

(a) Each integral fuel oil tank is subject to inspection as provided in this section. The owner or operator of the vessel shall have the tanks cleaned out and gas freed as necessary to permit internal examination of the tank or tanks designated by the marine inspector. The owner or operator shall arrange for an examination of the fuel tanks of each vessel during an internal structural examination at intervals not to exceed five years.

(b) Integral non-double-bottom fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(c) Double-bottom fuel oil tanks on vessels less than 10 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(d) All double-bottom fuel oil tanks on vessels 10 years of age or older but less than 15 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(e) All double-bottom fuel oil tanks on vessels 15 years of age or older need not be cleaned out and internally examined

if the marine inspector is able to determine by internal examination of at least one forward, one amidships, and one aft double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, the general condition of the tanks is satisfactory.

PART 91—[AMENDED]

15. The authority citation for Part 91 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

16. By revising § 91.40–1 to read as follows:

§ 91.40–1 Definitions relating to hull examinations.

As used in this part—

(a) "Drydock examination" means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

(b) "Internal structural examination" means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo or fuel oil tanks.

(c) "Cargo tank internal examination" means an examination of the vessel while afloat or in drydock and consists of an examination of the internals of all cargo tanks; except, if the vessel is certificated to carry cargoes regulated under Part 38 or Subchapter O of this chapter, the cargo tank internal examination must be accomplished as specified in Parts 38 and 151 of this chapter respectively.

(d) "Underwater survey" means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

17. By adding a new § 91.40–3 to read as follows:

§ 91.40–3 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals.

(a) Except as provided for in paragraphs (b) through (f) of this section, each vessel must undergo drydock, internal structural, and cargo tank internal examinations as follows:

(1) Vessels that operate in salt water must be examined in accordance with the intervals set forth in Table 91.40–3(a) of this section. Where Table 91.40–3(a) indicates a 2.5 year examination interval, it means a vessel must undergo two examinations within any five year period. No more than three years may elapse between any two examinations.

TABLE 91.40–3(a)

Salt water service vessels examination intervals in years

	Single hull ship and barge	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3]	Wood Hull ship and barge	Unmanned deck cargo barge [4]
Drydock	2.5	5.0	5.0	5.0	2.5	5.0
Internal Structural	2.5	2.5	2.5	2.5	2.5	2.5
Cargo Tank Internal	2.5[5]	5.0[5]	10.0[5]	10.0[5]	2.5[5]	.....

[1] Note: Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks which have a cargo containment envelope that is not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provided access for examination of all tank surfaces and the hull structure.
[4] Applicable to unmanned/non-permissively manned deck cargo barge which carries cargo only above the weather deck and which provides complete access for examination of the inside of the hull structure.
[5] Or as specified in Part 151.

(2) Vessels that operate in fresh water at least nine months in every 12 month period since the last drydock examination must be examined in accordance the intervals set forth in Table 91.40–3(b) of this section. Where Table 91.40–3(b) indicates a 2.5 year examination interval, it means a vessel must undergo two examinations within any five year period. No more than three years may elapse between any two examinations.

TABLE (91.40–3(b)

Fresh water service vessels examination intervals in years

	Single hull ship and barge	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3]	Wood hull ship and barge	Unmanned deck cargo barge [4]
Drydock	5.0	10.0	10.0	10.0	2.5	10.0
Internal structural	5.0	2.5	2.5	2.5	2.5	2.5

TABLE (91.40-3(b)—Continued

Fresh water service vessels examination intervals in years	Single hull ship and barge	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3]	Wood hull ship and barge	Unmanned deck cargo barge [4]
Cargo tank internal	5.0[5]	5.0[5]	10.0[5]	10.0[5]	2.5[5]	

[1] Note: Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks which have a cargo containment envelope that is not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to unmanned/non-permissively manned deck cargo barge which carries cargo only above the weather deck and which provides complete access for examination of the inside of the hull structure.
[5] Or as specified in Part 151.

(b) If, during an internal structural, cargo tank internal examination, or underwater survey, damage or deterioration to the hull plating, structural members, or cargo tanks is discovered, the Officer in Charge, Marine Inspection, may require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(c) Vessels less than 15 years of age (except wooden hull vessels) that are in salt water service with a 2.5 year drydock interval (as indicated in Table 91.40-3(a) of this section) or that are in fresh water service with a five year drydock interval (as indicated in Table 91.40-3(b) of this section) may be considered for an underwater survey instead of alternate drydock examinations, provided the vessel is fitted with an effective hull protection system. Vessel owners or operators must apply to the Officer in Charge, Marine Inspection, for approval of underwater surveys instead of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedure to be followed in carrying out the underwater survey.

(2) The location where the underwater survey will be accomplished.

(3) The method to be used to accurately determine the diver location relative to the hull.

(4) The means that will be provided for examining sea chests, sea valves, and other through-hull fittings.

(5) The means that will be provided for taking shaft bearing clearances.

(6) The condition of the vessel, including the anticipated draft of the vessel at the time of the survey.

(7) A description of the hull protection system.

(d) Vessels otherwise qualifying under paragraph (c) of this section, that are 15 years of age or older may be considered for continued participation in the underwater survey program on a case-by-case basis, if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for continued participation to Commandant (G-MVI);

(2) During the vessel's next drydocking after the request is submitted, no appreciable hull deterioration is indicated as a result of a complete set of hull gaugings; and

(3) The results of the hull gauging and the results of the Coast Guard drydock examination together with the recommendation of the Officer in Charge, Marine Inspection, are submitted to Commandant (G-MVI) for final approval.

(e) Each vessel which has not met with the applicable examination schedules in paragraphs (a) through (d) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

(f) The Commandant (G-MVI) may authorize extensions to the examination intervals specified in paragraph (a) of this section.

18. By revising § 91.40-5 to read as follows:

§ 91.40-5 Notice and plans required.

(a) The master, owner, operator, or agent of the vessel shall notify the Officer in Charge, Marine Inspection, whenever the vessel is to be drydocked regardless of the reason for drydocking.

(b) Each vessel, except barges, that holds a Load Line Certificate must have on board a plan showing the vessel's scantlings. This plan must be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, internal structural examination, cargo tank internal examination, or underwater survey or whenever repairs are made to the vessel's hull.

(c) Each barge that holds a Load Line Certificate must have a plan showing the barge's scantlings. The plan need not be maintained on board the barge but must be made available to the Coast Guard marine inspector whenever the barge undergoes a drydock examination, internal structural examination, or cargo tank internal examination, or underwater survey or whenever repairs are made to the barge's hull.

19. By adding a new Subpart 91.43 to read as follows:

Subpart 91.43—Fuel Oil Tank Examination

§ 91.43-1 When required.

(a) Each integral fuel oil tank is subject to inspection as provided in this section. The owner or operator of the vessel shall have the tanks cleaned out and gas freed as necessary to permit internal examination of the tank or tanks designated by the marine inspector. The owner or operator shall arrange for an examination of the fuel tanks of each vessel during an internal structural examination at intervals not to exceed five years.

(b) Integral non-double-bottom fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(c) Double-bottom fuel oil tanks on vessels less than 10 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(d) All double-bottom fuel oil tanks on vessels 10 years of age or older but less than 15 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(e) All double-bottom fuel oil tanks on vessels 15 years of age or older but less than 25 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward, one amidships, and one aft double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(f) All double-bottom fuel oil tanks on vessels 25 years of age or older need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one double-bottom fuel oil tank in way of each cargo hold/tank, and by external examination of all other double-bottom fuel oil tanks, that the general condition of the tanks is satisfactory.

PART 167—[AMENDED]

20. The authority citation for Part 167 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, § 167.65–65 also issued under 46 U.S.C. 6101, and § 167 60.15 also issued under 46 U.S.C. 8105; 49 CFR 1.46(b).

21. By adding a new § 167.15–27 to read as follows:

§ 167.15–27 Definitions relating to hull examinations.

As used in this part—

(a) "Drydock examination" means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

(b) "Internal structural examination" means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo or fuel oil tanks.

22. By revising § 167.15–30 to read as follows:

§ 167.15–30 Drydock examination and internal structural examination intervals.

(a) Except as provided for in paragraphs (b) through (e) of this section, each vessel must undergo drydock and internal structural examinations as follows:

(1) Vessels that operate in salt water must undergo two drydock and two internal stuctural examinations within any five year period. No more than three years may elapse between any two examinations.

(2) Vessels that operate in fresh water at least nine months in every 12 month period since the last drydock examination must undergo drydock and internal structural examinations at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo two drydock and two internal structural examinations within any five year period regardless of the type of water in which they operate. No more than three years may elapse between any two examinations.

(c) If, during an internal structural examination damage or deterioration to the hull plating or structural members is discovered, the Officer in Charge, Marine Inspection, may require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(d) Each vessel which has not met with the applicable examination schedules in paragraphs (a) through (c) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

(e) The Commandant (G–MVI) may authorize extensions to the examination intervals specified in paragraphs (a) and (b) of this section.

23. By adding a new § 167.15–35 to read as follows:

§ 167.15–35 Notice and plans required.

(a) The master, owner, operator, or agent of the vessel shall notify the Officer in Charge, Marine Inspection, whenever the vessel is to be drydocked regardless of the reason for drydocking.

(b) Each vessel, except barges, that holds a Load Line Certificate must have on board a plan showing the vessel's scantlings. This plan must be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination or internal structural examination or whenever repairs are made to the vessel's hull.

(c) Each barge that holds a Load Line Certificate must have a plan showing the barge's scantlings. The plan need not be maintained on board the barge but must be made available to the Coast Guard marine inspector whenever the barge undergoes a drydock examination or internal structural examination or whenever repairs are made to the barge's hull.

24. By adding a new § 167.15–40 to read as follows:

§ 167.15–40 Fuel oil tank examination.

(a) Each integral fuel oil tank is subject to inspection as provided in this section. The owner or operator of the vessel shall have the tanks cleaned out and gas freed as necessary to permit internal examination of the tank or tanks designated by the marine inspector. The owner or operator shall arrange for an examination of the fuel tanks of each vessel during an internal structural examination at intervals not to exceed five years.

(b) Integral non-double-bottom fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(c) Double-bottom fuel oil tanks on vessels less than 10 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(d) Double-bottom fuel oil tanks on vessels 10 years of age or older but less than 15 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(e) All double-bottom fuel oil tanks on vessels 15 years of age or older need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward, one amidships, and one aft double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

25. By revising § 167.15–50 to read as follows:

§ 167.15–50 Tailshaft examinations.

Tailshaft examinations on nautical school ships must conform with the examination requirements in Part 61 of this chapter.

PART 169—[AMENDED]

26. The authority citation for Part 169 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

27. By revising § 169.229 to read as follows:

§ 169.229 Drydock examination and internal structural examination intervals.

(a) Except as provided for in paragraphs (b) through (e) of this section, each vessel must undergo drydock and internal structural examinations as follows:

(1) Vessels that operate in salt water must undergo two drydock and two internal stuctural examinations within any five year period. No more than three years may elapse between any two examinations.

(2) Vessels that operate in fresh water at least nine months in every 12 month period since the last drydock examination must undergo drydock and internal structural examinations at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo two drydock and two internal structural examinations within any five year period regardless of the type of water in which they operate. No more than three years may elapse between any two examinations.

(c) If, during an internal structural examination damage or deterioration to the hull plating or structural members is discovered, the Officer in Charge, Marine Inspection, may require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(d) Each vessel which has not met with the applicable examination schedules in paragraphs (a) through (c) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

(e) The Commandant (G–MVI) may authorize extensions to the examination intervals specified in paragraphs (a) and (b) of this section.

28. By revising § 169.231 to read as follows:

§ 169.231 Definitions relating to hull examinations.

As used in the part—

(a) "Drydock examination" means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

(b) "Internal structural examination" means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo or fuel oil tanks.

29. By revising § 169.233 to read as follows:

§ 169.233 Notice and plans required.

(a) The master, owner, operator, or agent of the vessel shall notify the Officer in Charge, Marine Inspection, whenever the vessel is to be drydocked regardless of the reason for drydocking.

(b) Each vessel, except barges, that holds a Load Line Certificate must have on board a plan showing the vessel's scantlings. This plan must be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination or internal structural examination or whenever repairs are made to the vessel's hull.

(c) Each barge that holds a Load Line Certificate must have a plan showing the barge's scantlings. The plan need not be maintained on board the barge but must be made available to the Coast Guard marine inspector whenever the barge undergoes a drydock examination or internal structural examination or whenever repairs are made to the barge's hull.

30. By adding a new § 169.234 to read as follows:

§ 169.234 Examination of fuel oil tanks.

(a) Each integral fuel oil tank is subject to inspection as provided in this section. The owner or operator of the vessel shall have the tanks cleaned out and gas freed as necessary to permit internal examination of the tank or tanks designated by the marine inspector. The owner or operator shall arrange for an examination of the fuel tanks of each vessel during an internal structural examination at intervals not to exceed five years.

(b) Integral non-double-bottom fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(c) Double-bottom fuel oil tanks on vessels less than 10 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(d) All double-bottom fuel oil tanks on vessels 10 years of age or older but less than 15 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(e) All double-bottom fuel oil tanks on vessels 15 years of age or older need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward, one amidships, and one aft double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

PART 189—[AMENDED]

31. The authority citation for Part 189 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

32. By revising § 189.40–1 to read as follows:

§ 189.40–1 Definitions relating to hull examinations.

As used in this part—

(a) "Drydock examination" means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings, including sea chests, sea valves, sea strainers, and bilge injection values.

(b) "Internal structural examination" means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo or fuel oil tanks.

(c) "Underwater survey" means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through hull fittings, including sea chests, sea valves, sea strainers, and bilge injection valves.

33. By adding a new § 189.40–3 to read as follows:

§ 189.40–3 Drydock examination, underwater survey, and internal structural examination intervals.

(a) Except as provided for in paragraphs (b) through (g) of this section, each vessel must undergo drydock and internal structural examinations as follows:

(1) Vessels that operate in salt water must undergo two drydock and two internal structural examinations within any five year period. No more than three years may elapse between any two examinations.

(2) Vessels that operate in fresh water at least nine months in every 12 month

period since the last drydock examination must undergo drydock and internal structural examinations at intervals not to exceed five years.

(b) Vessels with wooden hulls must undergo two drydock and two internal structural examinations within any five year period regardless of the type of water in which they operate. No more than three years may elapse between any two examinations.

(c) If, during an internal structural examination or underwater survey, damage or deterioration to the hull plating or structural members is discovered, the Officer in Charge, Marine Inspection, may require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(d) Each vessel under paragraph (a) of this section that is less than 15 years of age may be considered for an underwater survey instead of alternate drydock examinations, provided the vessel is fitted with an effective hull protection system. Vessel owners or operators must apply to the Officer in Charge, Marine Inspection, for approval of underwater surveys instead of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedure to be followed in carrying out the underwater survey.

(2) The location where the underwater survey will be accomplished.

(3) The method to be used to accurately determine the diver location relative to the hull.

(4) The means that will be provided for examining sea chests, sea valves and other through-hull fittings.

(5) The means that will be provided for tanking shaft bearing clearances.

(6) The condition of the vessel, including the anticipated draft of the vessel at the time of the survey.

(7) A description of the hull protection system.

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older may be considered for continued participation in the underwater survey program on a case-by-case basis, if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for continued participation to Commandant (G-MVI);

(2) During the vessel's next drydocking after the request is submitted, no appreciable hull deterioration is indicated as a result of a complete set of hull gaugings; and

(3) The results of the hull gauging and the results of the Coast Guard drydock examination together with the recommendation of the Officer in Charge, Marine Inspection, are submitted to Commandant (G-MVI) for final approval.

(f) Each vessel which has not met with the applicable examination schedules in paragraph (a) through (e) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

(g) The Commandant (G-MVI) may authorize extensions to the examination intervals specified in paragraphs (a) and (b) of this section.

34. By revising § 189.40-5 to read as follows:

§ 189.40-5 Notice and plans required.

(a) The master, owner, operator, or agent of the vessel shall notify the Officer in Charge, Marine Inspection, whenever the vessel is to be drydocked regardless of the reason for drydocking.

(b) Each vessel, except barges, that holds a Load Line Certificate must have on board a plan showing the vessel's scantlings. This plan must be made available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination, internal structural examination, or underwater survey or whenever repairs are made to the vessel's hull.

(c) Each barge that holds a Load Line Certificate must have a plan showing the barge's scantlings. The plan need not be maintained on board the barge but must be made available to the Coast Guard marine inspector whenever the barge undergoes a drydock examination, internal structural examination, or underwater survey or whenever repairs are made to the barge's hull.

35. By adding a new Subpart 189.43 to read as follows:

Subpart 189.43—Examination of Fuel Oil Tanks

§ 189.43-1 When required.

(a) Each integral fuel oil tank is subject to inspection as provided in this section. The owner or operator of the vessel shall have the tanks cleaned out and gas freed as necessary to permit internal examination of the tank or tanks designated by the marine inspector. The owner or operator shall arrange for an examination of the fuel tanks of each vessel during an internal structural examination at intervals not to exceed five years.

(b) Integral non-double-bottom fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(c) Double-bottom fuel oil tanks on vessels less than 10 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

(d) All double-bottom fuel oil tanks on vessels 10 years of age or older but less than 15 years of age need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

(e) All double-bottom fuel oil tanks on vessels 15 years of age or older need not be cleaned out and internally examined if the marine inspector is able to determine by internal examination of at least one forward, one amidships, and one aft double-bottom fuel oil tank, and by external examination of all other double-bottom fuel oil tanks on the vessel, that the general condition of the tanks is satisfactory.

Signed: October 16, 1987.

P.A. Yost,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 87-24498 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 52, No. 205
Friday, October 23, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites public comments on a proposal to suspend for the months of October and November 1987 the requirement that at least 40 percent of a supply plant's receipts be delivered to pool distributing plants or be disposed of as fluid milk products on routes in the marketing area in order to qualify the supply plant for pooling under the Oregon-Washington order. The action was requested by a cooperative association that represents producers who supply a significant amount of milk for the market. The association claims that this action is necessary to assure that its member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales.

DATE: Comments are due on or before October 30, 1987.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Oregon-Washington marketing area is being considered for the months of October and November 1987:

In § 1124.9(b), the words "not less than 40 percent in any month of September through November and" and "other".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October 1987 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of October and November 1987 the requirement that at least 40 percent of a supply plant's receipts be delivered to pool distributing plants or disposed of as fluid milk products on routes in the marketing area in order to qualify the supply plant for pooling. The suspension was requested by Tillamook County Creamery Association (TCCA), a cooperative association that represents a large number of the market's producers.

According to the cooperative, significant changes during the past year have had a negative impact on TCCA's ability to assure that 40 percent of its members' milk production will be delivered to pool distributing plants or distributed as route disposition. Among the changes cited by the cooperative are a loss of sales to distributing plants, increases in the milk production of its member producers, and changes in the alignment of marketing organizations in the market. As a result of these changes in marketing conditions, TCCA states that it has been forced to move milk in an uneconomic and inefficient manner solely to maintain the pool status of its producers who historically have supplied the fluid needs of the Oregon-Washington marketing area.

Accordingly, it may be appropriate to suspend the requested order language for the months of October and November 1987.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1124 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on October 16, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-24607 Filed 10-22-87; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 86-037R]

Ingredients That May be Identified as Flavors or Natural Flavors When Used in Meat or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On August 18, 1987, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations to better define

and limit the substances which are permitted to be identified only as "flavors," "natural flavors," or "spices" on packages of meat and poultry products. The proposed rule required that many of these substances by identified on product labels by their common or usual names, thereby informing consumers of the origin of these materials including the species and specific animal tissues from which they have been derived, if animal in origin. Since that time, the Agency has received requests to allow additional time to review and evaluate the proposal and to submit comments. The comment period closed on October 19, 1987. In response to these requests, the Agency has determined that it will reopen the comment period for an additional 60 days.

DATE: Comments must be received on or before December 22, 1987.

ADDRESS: Written comments may be mailed to Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3175, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: On August 18, 1987, the Food Safety and Inspection Service (FSIS) published a proposed rule in the **Federal Register** (52 FR 30922) to amend the Federal meat and poultry products inspection regulations to require that certain substances added to meat and poultry products and identified only as flavors or natural flavors or spcies be identified on product labels by their common or usual name. Since that time, the Agency has received requests to allow additional time to review and evaluate the proposal and to submit comments. FSIS is interested in receiving additional views on this proposal and, therefore, has determined there is sufficient justification for reopening the comment period for an additional 60 days.

Done at Washington, DC on: October 20, 1987.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-24610 Filed 10-22-87; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 318

[Docket No. 86-038R]

Determination of "Added Water" in Cooked Sausages

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On August 18, 1987, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat inspection regulations to define the method by which FSIS determines the quantity of added water in cooked sausages. Since that time, the Agency has received requests to allow additional time to review and evaluate the proposal and to submit comments. The comment period closed on October 19, 1987. In response to these requests, the Agency has determined that it will reopen the comment period for an additional 60 days.

DATE: Comments must be received on or before December 22, 1987.

ADDRESS: Written comments may be mailed to Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3175, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: On August 18, 1987, the Food Safety and Inspection Service (FSIS) published a proposed rule in the **Federal Register** (52 FR 30925) to amend the Federal meat inspection regulations to define the method by which FSIS determines the quantity of added water in cooked sausages. Since that time, the Agency has received requests to allow additional time to review and evaluate the proposal and to submit comments. FSIS is interested in receiving additional views on this proposal and, therefore, has determined there is sufficient justification for reopening the comment period for an additional 60 days.

Done at Washington, DC, on: October 20, 1987.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-24609 Filed 10-22-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ACE-12]

Proposed Alteration of Transition Area; Charles City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Charles City, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Charles City, Iowa, Municipal Airport, utilizing the Charles City NDB as a navigational aid.

DATE: Comments must be received on or before November 20, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All

comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Charles City, Iowa. Runway 12/30 at the Charles City, Iowa, Municipal Airport is being relocated. As a result thereof, a new instrument approach procedure is being developed for the airport utilizing the Charles City NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails alteration of the transition area at Charles City, Iowa, at or above 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Charles City, IA [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of Charles City Municipal Airport (Lat. 43°04'15" N., Long. 92°36'15" W.); and within 2.75 miles each side of the 316 bearing from Charles City NDB (Lat. 43°04'18" N., Long. 92°36'35" W.), extending from the 5-mile radius area to 8.0 miles northwest of the airport; and within 2.75 miles each side of the 104° bearing from Charles City NDB extending from 5-mile radius area to 8.0 miles southeast of the airport.

Issued in Kansas City, Missouri, on October 6, 1987.

Clarence E. Newbern,

Assistant Manager, Air Traffic Division.

[FR Doc. 87-24665 Filed 10-21-87; 11:47 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-46]

Proposed Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of three Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by New England, Great Lakes and the Southern Regions. This proposal is a portion of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action would reduce en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinated segments until completed.

DATES: Comments must be received on or before November 13, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No.87-AWA-46, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-46." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered

before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to the descriptions of V-31, V-84 and V-501 located in the vicinity of New York. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate the congestion, which causes delays, this proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA; Chicago, IL; Atlanta, GA; Miami, FL; and New York areas. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-31 [Amended]

By removing the words "INT Elmira 357° and Rochester, NY 125° radials;" and substituting the words "INT Elmira 002°T(011°M) and Rochester, NY, 120°T(129°M) radials;"

V-84 [Amended]

By removing the words "INT Geneseo 091° and Syracuse, NY, 242° radials;" and substituting the words "INT Geneseo 091°T(100°M) and Syracuse, NY, 240°T(251°M) radials;"

V-501 [Amended]

By removing the words "INT Elmira, NY, 357° and Geneseo, NY, 091° radials;" and substituting the words "INT Wellsville 045°T)054°M) and Geneseo 091°T(100°M) radials;"

Issued in Washington, DC, on October 14, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24535 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-45]

Proposed Alteration of Jet Routes; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Jet Routes J-61 and J-207 located in the vicinity of Wilmington, NC. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the eastern portion of the United States. This proposal is a portion of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of available limited airspace along the east coast corridor. This action would reduce en route and terminal delays, save fuel and reduce controller workload. The EECP is being implemented in coordinated segments until completed.

DATE: Comments must be received on or before November 13, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-45, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue W., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit

with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-45." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-61 and J-207 located in the vicinity of Wilmington, NC. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate the congestion, which causes delays, this proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA; Chicago, IL; Atlanta, GA; and New York areas. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-61 [Amended]

By removing the words "From INT Wilmington, NC, 028°" and substituting the words "From INT Dixon NDB, NC, 023°"

J-207 [Amended]

By removing the words "to Raleigh-Durham, NC." and substituting the words "Raleigh-Durham, NC; to Franklin, VA."

Issued in Washington, DC, on October 14, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24534 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Solicitation of Public Comment Regarding Tariff Classification of Annular, Corrugated Flexible Metal Hose

AGENCY: Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comment.

SUMMARY: Customs is reviewing its position regarding the tariff classification of certain imported annular, corrugated flexible metal hose, either plain or covered with a braided metal sleeve. Such hose is now classified under the Tariff Schedule item number for "pipes and tubes and blanks therefor * * * of iron * * * or steel." It is proposed to classify the product in question under the Tariff Schedule item number for "flexible metal hose or tubing, whether covered with wire or other material, and with or without fittings." If reclassified, the hose would be subject to a lower rate of duty and no longer be subject to steel arrangements the U.S. has with a number of countries. Comments with respect to the issues will be considered before any decision is reached.

DATE: Comments (preferably in triplicate) must be received on or before November 23, 1987.

ADDRESS: Comments should be submitted to and may be inspected at the Regulations Control Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Classification and Value Division (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its position regarding the tariff classification of certain imported annular, corrugated flexible metal hose. The merchandise is made from hot rolled steel strip which is formed and welded into a tube. A stamping machine is then used to form annular corrugations, that is, convolutions that are parallel to one another. These provide flexibility and elasticity. Merchandise of this type is normally imported in lengths of 80 to 100 feet, on reels, and is used with appropriate end attachments or fittings in the steel, refining, oil/natural gas, and chemical industries to convey liquids such as water, acids, chemicals, asphalt, as well as gases and steam, all under pressure. Such hose is also imported covered with a braided metal sleeve which is said to enhance pressure resistance by increasing strength and elasticity.

The described metal hose, either plain or covered with a sleeve, is currently classified in item 610.52, Tariff Schedules of the United States (19 U.S.C. 1202; TSUS) as "pipes and tubes and blanks therefor * * * of iron * * * or steel." This classification carries a column 1 rate of duty of 7.5% ad

valorem, plus additional duties on the alloy content. Also, if from Italy, France, Japan, or the United Kingdom, such metal hose is subject to Voluntary Restraint Agreements (VRA's) the U.S. has with those countries. VRA's are steel arrangements negotiated between the U.S. Trade Representative and other countries which dictate that basic steel products from those other countries cannot be entered into the U.S. for consumption unless accompanied by a valid export certificate. The suggested tariff classification is in item 652.09, TSUS, as "flexible metal hose or tubing, whether covered with wire or other material, and with or without fittings" This classification carries a column 1 rate of duty of 5.8% ad valorem and is not subject to the above mentioned VRA's.

In previously classifying hose as described above, great weight was placed on the 1929 *Summaries of Tariff Information* as a source of legislative history of the flexible metal hose provision. Compiled by the U.S. Tariff Commission for use by legislators preparing to enact the Tariff Act of 1930, it was noted therein, "Flexible metal tubing is made from a continuous metal strip spirally wound and formed in a single or double groove. The edges of the strip are turned in so as to make an interlocked joint * * * The flexibility is given by the elasticity of the metal and not by the sliding of one part over another. Flexible metal tubing may be of the full, square, or semi-interlocked type * * * armored or lined * * * with welded seam or seamless." Customs has traditionally used this authority to limit the provision for flexible metal hose to such hose of interlocked construction.

Customs now believes that a more careful reading of the 1929 *Summaries* reveals ambiguities which make it unreliable evidence of Congressional intent. For example, one of the stated uses of interlocked hose or tubing, to convey acids, is not believed appropriate to this type of product, but rather, to the leak-proof annular or helical type. Moreover, the reference to a product with a welded seam does not appear descriptive of the interlocked type. Customs concludes from these inconsistencies that other types of flexible metal hose or tubing may have been intended to be covered by the flexible metal hose provision.

Item 652.09, TSUS, the flexible metal hose provision, is an *eo nomine* provision which, in the absence of a contrary legislative intent, covers all forms of the named article. Lexicographic sources define pipes and tubes by reference to one another, and hose to include flexible tube (*Webster's New Collegiate Dictionary*) or flexible pipe (*Webster's New International Dictionary*, 2nd ed., unabridged) used to convey fluids. Customs is satisfied that annular, corrugated flexible metal hose is within the *eo nomine* provision of item 652.09, TSUS. It is proposed to classify future importations of that product under that provision.

In order to properly consider this issue, Customs is requesting the views of the public on the proposed classification of annular, corrugated flexible metal hose in item 652.09, TSUS, as opposed to classification in item 610.52, TSUS. If, after reviewing the comments received in response to this notice, Customs decides to adopt this change in position, an effective date for the change must be determined. In determining this date, consideration will be given to any written comments regarding an appropriate time frame in which the change in position should occur and why such a time frame is recommended.

Comments

Before making any determinations on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m., and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 23, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87-24539 Filed 10-22-87; 8:45 am]

BILLING CODE 4820-02-M

31 CFR Part 103

Bank Secrecy Act Regulations; Extension of Time for Comments

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Because of a request from the U.S. Postal Service, notice is hereby given that the Department of the Treasury is extending the comment period on the Proposed Reporting Requirements of the United States Postal Service, published in the **Federal Register** on September 22, 1987 [52 FR 35562].

DATE: Comments now will be accepted through November 22, 1987.

ADDRESS: Address written comments to: Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Esq., Attorney Advisor, Office of the Assistant General Counsel (Enforcement), Room 2000, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-9947.

Date: October 19, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 87-24519 Filed 10-22-87; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 104

[DoD Directive 6000.3]

Voluntary Private Health Insurance Conversion Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: 32 CFR Part 104 was published on July 15, 1969. Formally called "Health Care Coverage for Persons Being Separated from Active Duty", it established a program designed to give certain persons being separated from active duty an opportunity to purchase short-term health insurance coverage for themselves and their dependents. The FY 85 DoD Authorization Act report language requested the Department of Defense to develop a competitively priced, long term, comprehensive, private sector health insurance policy. Congress requested that the policy be designed for purchase by all former spouses, members and their dependents separating from the Uniformed Services, and dependent children reaching the age

of majority and that it cover pre-existing conditions. 32 CFR Part 104 needs to be revised to include this wider group.

DATE: Comments must be received by November 23, 1987.

ADDRESS: Office of the Assistant Secretary of Defense (Health Affairs), the Pentagon, Room 3D316, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Galaty, telephone (202) 694–4685.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 104

Health insurance, Military personnel.

Accordingly, 32 CFR Part 104 is proposed to be revised to read as follows:

PART 104—VOLUNTARY HEALTH INSURANCE CONVERSION PROGRAM

Sec.
104.1 Reissuance and purpose.
104.2 Applicability.
104.3 Definitions.
104.4 Policy.
104.5 Responsibilities.

Authority: Sec. 301; 80 Stat. 379; 5 U.S.C. 301.

§ 104.1 Reissuance and purpose.

This part reissues 32 CFR Part 104 to:

(a) Respond to the Congressional requests discussed in: Conference Report of the Committee on Armed Services on the National Defense Authorization Act, Fiscal Year 1985, Report 98–1080, Pages 301 to 303; Conference Report of the Committees on Armed Services on the National Defense Authorization Act, Fiscal Year 1987, Report 99–1001, Page 484; Conference Report of the Committee on Armed Services U.S. House of Representatives on H.R. 4428, the National Defense Authorization Act, Fiscal Year 1987, Report 99–718, Pages 211 and 212 to make a private health insurance conversion policy available for purchase through the Department of Defense (DoD).

(b) Provide policy, prescribe procedures, and assign responsibilities.

§ 104.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments and by agreement to the other Uniformed Services (the Coast Guard, the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA) and covers Service members and their family members who lose eligibility for Uniformed Services medical benefits, and persons for whom active duty or retiree families are legally responsible but who are not eligible for Uniformed Services medical benefits.

§ 104.3 Definitions.

Conversion policy. A comprehensive, private-pay health insurance policy that provides benefits similar to those available under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). It must be available without exception to all eligible individuals and cover preexisting conditions (with a maximum of a one year waiting period on such conditions) at a rate lower than similar private individual insurance policies. In addition, after the Uniformed Services help in the initial enrollment process, all payments and policy arrangements must be made between the purchasing individual and the company offering the policy. The United States Government (including DoD, the Coast Guard, PHS and NOAA) shall assume no financial liability and has no legal or other responsibility for the policy and its administration.

Eligible. Individuals are eligible to purchase the policy when they lose their eligibility for Uniformed Services health benefits or are minors who become the legal responsibility of active duty or retired families and are not eligible for Uniformed Services health benefits. These include:

(a) Spouses of members whose marriage ends in divorce, dissolution or annulment after at least one year of marriage,

(b) Members, their dependents or former dependents who are granted temporary coverage in the Uniformed Service health care system would become eligible when they lose their temporary coverage.

(c) Members leaving active duty (other than those separated for conditions existing prior to service) and their family members who are covered by CHAMPUS,

(d) Unmarried children of active duty, retired members and survivors up to the age of 21 (23 if in school),

(e) Children who are legal wards of active duty and retired families, and

(f) Grandchildren of active duty or retired members who are born out of wedlock to dependent children who are covered by CHAMPUS.

§ 104.4 Policy.

(a) All eligible individuals shall be given an opportunity to purchase a conversion policy. Active Duty members separating from a Uniformed Service shall have at least 30 days after their separation to purchase a conversion policy and former spouses, children coming of age and legal dependents shall have a minimum of 90 days after their qualifying event. Insurance companies may institute more liberal enrollment periods at their discretion and may consider enrolling people outside of the enrollment period on the basis of meeting underwriting qualifications.

(b) A company or companies offering policies through DoD shall finance, operate and publicize their policies and shall supply all designated distribution centers, with explanation brochures, applications, updated premium schedules and temporary identification material.

(c) Uniformed Services members and their family members shall be informed of the availability of conversion policies at appropriate times during their active duty service and again during separation processing or when contacting a Uniformed Services office about benefit status changes. All such individuals shall be:

(1) Given material explaining the costs, benefits and enrollment procedures of conversion policies; and

(2) Advised of the eligibility criteria and told that the purchase of coverage is entirely voluntary, that the coverage can be purchased for 90 days and then on a monthly basis as required until they lose their eligibility, that the cost of any policy in which they enroll will be borne entirely by them, that they must make the first payment within a specified time of their status change and that all payment arrangements (with the exception of members who want the first payment made as a one-time payroll deduction) must be made directly with the company offering the conversion policy they select; and

(3) Advised that all questions involving their coverage are a matter between them and the company providing the coverage, and the United States Government does not have liability or responsibility for the administration of the policy.

(d) Once an agreement has been signed between a company and DoD, policies shall continue to be offered until such time as: (1) A company offering a policy provides DoD with a 90 day notice, after prior consultation, that they will be terminating the policy, or (2) DoD gives a company a 90 day notice, after prior consultation, that they are not meeting program requirements and that DoD will terminate its agreement to offer their policy through DoD.

§ 104.5 Responsibilities.

(a) The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) or his designee shall:

(1) Advertise in appropriate trade journals and periodicals and through appropriate trade channels, at least once every three years, the interest of the Uniformed Services in making a conversion policy available.

(2) Select one or more policies that meet the requirements of this part and sign an agreement between the company or companies offering policies and DoD (and by agreement with such others of the Uniformed Services as desire to join with DoD).

(3) Work with the Uniformed Services and appropriate organizations to specify the forms, cards and notices to be used and ensure that information on conversion policies is available to eligible persons.

(4) Monitor and evaluate the implementation of this part, periodically review all conversion policies being offered and all proposed changes to conversion policies, and, as it becomes necessary:

(i) Make recommendations to the Uniformed Services or the Secretary of Defense regarding the conversion policies.

(ii) Amend the letter of agreement with a company offering a conversion policy, or

(iii) Withdraw the privileges of offering a policy through the Uniformed Services when it is determined that the best interests of the Uniformed Services and the persons losing eligibility to the medical benefit make such action appropriate.

(b) The Assistant Secretary of Defense (Public Affairs) (ASD(PA)) or his designee shall direct his staff to help publicize the program through their normal channels on a periodic basis.

(c) The Secretaries of the Military Departments and where agreed to the Commandant of the Coast Guard and the Secretary of the Department of Health and Human Services, or their designees, shall:

(1) Establish internal programs implementing this part.

(2) Direct their Public Affairs offices to help publicize the program.

(3) Direct their Service Publication Distribution Centers to disseminate information on the program on a periodic basis.

(4) Require their medical facilities, Family Service Centers, Identification Card Offices, Separation Processing Activities and any other appropriate office they designate to:

(i) Stock explanation brochures, application forms, payment schedules and temporary identification material specified by the Office of the ASD(HA) and supplied by companies offering the policies.

(ii) Validate the applications or supply the appropriate validation forms: Defense Enrollment Eligibility Reporting System (DEERS) print-outs, or Standard Form DD 214 or 1172.

(iii) Where appropriate (at separation offices and other designated sites) and desired by the purchaser, collect the first payment or arrange for payroll deductions to be made, issue temporary conversion policy identification material after coverage has been paid, and forward, at least once a week, all applications and payments, using a specified notice identified by the Office of the ASD(HA), to the designated office of the company from which the coverage was purchased.

Thomas J. Condon,

Acting Division Chief Directives Division.

[FR Doc. 87-24599 Filed 10-22-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3281-2]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the attainment status designation for six counties in Ohio relative to the total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS). These counties are: Gallia, Jefferson, Lake, Muskingum, Richland, and Washington. The present TSP air quality status for all of these counties varies with respect to the primary and secondary TSP NAAQS. These counties are either partial or full county nonattainment of one or both of these NAAQS. In this notice, USEPA is proposing to either redesignate the counties to full attainment or reduce the size of the nonattainment area(s). The purpose of this notice is to discuss the results of USEPA's review of the State's request and supporting data and to solicit comments on these data and USEPA's proposed action.

DATE: Comments must be received by November 23, 1987.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (the Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status for all areas within the State. The primary TSP NAAQS was violated when, in a year, either: (1) The geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubic meter of air (75 ug/m^3) (the annual primary standard); or (2) the 24-hour concentration of TSP exceeds 260 ug/m^3 more than once (the 24-hour standard). The secondary TSP NAAQS was violated when, in a year, the 24-hour concentration exceeds 150 ug/m^3 more than once. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

EPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). However, EPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the

attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) describes EPA's transistion policy regarding TSP redesignations.

USEPA may redesignate an area to attainment if it is supported by all available data including eight consecutive quarters of the most recent, quality assured, representative ambient air quality data which show no violation of the NAAQS, and evidence of a fully approved and implemented State Implementation Plan (SIP) control strategy. In special situations, USEPA may consider less than the eight consecutive quarters of such data: For example, when a state of the art modeling analysis is provided showing that the basic SIP strategy is sound and that actual, enforceable emission reductions are responsible for the recent air quality improvements. Further, an exception to the requirement for a fully approved and implemented SIP control strategy can be made if the physical circumstances and long-term economic factors are such that the implemented measures have the same weight as a SIP control strategy: for example, the permanent closing of the major emitting sources, road paving to eliminate fugitive emissions, or other irreversible measures. Submittals including such changes, even though these changes have not been formally approved as SIP revisions, have the practical impact of USEPA approved strategies and can be the basis for approval of the redesignation. In addition, a limited exception to the redesignation requirements discussed above is available: Where the State can convincingly demonstrate that an area larger than required was initially and inaccurately designated nonattainment, the "overdesignated" nonattainment area can be reduced in size to an appropriate boundary. USEPA's policy on redesignations is summarized in a memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards, dated April 21, 1983, entitled "Section 107 Designation Policy Summary"; a memorandum from G.T. Helms, Chief, Control Programs Operations Branch, dated December 23, 1983, entitled "Section 107 Questions and Answers"; and a memorandum from G.A. Emison, Director, Office of Air Quality Planning and Standards, dated September 30, 1985, entitled "Total Suspended Particulate (TSP) Redesignations." These memoranda are available for public review in the rulemaking file on this notice.

On May 16, 1983, the State of Ohio submitted a request to revise the attainment status designation for the following 16 counties relative to the TSP NAAQS: Columbiana, Erie, Gallia, Jackson, Jefferson, Lake, Logan, Medina, Miami, Monroe, Muskingum, Richland, Scioto, Summit, Trumbull and Washington. On February 24, 1984 (49 FR 6926), in a notice of proposed rulemaking, USEPA proposed to disapprove the State's request for all of the counties because of a lack of sufficient technical support. In that notice, USEPA stated that if the State provided the additional technical support, including evidence of implemented control strategies, and USEPA determined that they were acceptable, then USEPA would withdraw its notice of proposed disapproval and approve the designations. On April 12, 1984, the State submitted additional information for Erie County, and, in a notice of final rulemaking published on April 22, 1985 (50 FR 15746), USEPA approved the redesignation for Erie County, along with Lawrence County.

On November 21, 1984, Ohio submitted a TSP redesignation request for Franklin County. On June 1, 21, and 25, 1984; July 9, and 10, 1984; September 27, 1984; November 27, 1984; and April 1, 1985, the State submitted additional information for the 15 remaining counties. In addition, in a November 27, 1984, submittal the State amended its redesignation request for Columbia, Jefferson, Lake, and Scioto Counties. On April 23, 1985, the State submitted a TSP redesignation request for Sandusky County. On July 8, 1985 (50 FR 27892), USEPA promulgated a newly revised stack height regulation to comport with the stack height requirements of section 123 of the Act. The impacts of the new stack height regulations must be assessed in any TSP redesignation. Thus, USEPA could not proceed with rulemaking on these 17 counties (15 counties contained in the May 16, 1983, submittal, Franklin County from a November 21, 1984, redesignation request, and Sandusky County from an April 23, 1985 redesignation request) until the impact of the stack height regulations was assessed.

USEPA's rulemaking on the acceptability of the TSP redesignation for these 17 counties will now be segmented into two groups. Group I consists of those counties with few sources and less potential for significant stack height impacts (Columbiana, Jackson, Logan, Medina, Miami, Monroe, Sandusky and Scioto Counties). Group II consists of those counties with more sources and greater potential for significant stack height impacts (Gallia, Franklin, Jefferson, Lake, Muskingum, Richland, Summit, Trumbull and Washington Counties). In a December 3, 1985, letter the State discussed the impacts of tall stacks or illegal dispersion for the eight Group I counties. USEPA proposed rulemaking action on the eight counties on September 25, 1987 (52 FR 36055). In a May 30, 1986, letter the State discussed the impacts of tall stacks on the following six Group II counties: Gallia, Jefferson, Lake, Muskingum, Richland and Washington Counties. For the remaining three Group II counties of Summit, Franklin and Trumbull, the State is requesting that USEPA withhold rulemaking until they are able to address the stack height concerns. In today's notice USEPA will propose rulemaking on six of the Group II counties. USEPA will take separate action on the three remaining Group II counties upon receipt of the necessary stack height data. Before USEPA begins its discussion on the acceptability of the redesignation for the six counties, based upon the three policy memoranda discussed earlier and the newly revised stack height regulations, it would like to first discuss the implication of the revised stack height regulations on TSP redesignation both in general and Ohio.

Implications of Newly Revised Stack Height Regulations on TSP Regulations

On July 8, 1985, (50 FR 27892), USEPA promulgated its stack height regulation under section 123 of the Act. This regulation is intended to ensure that air pollution emission limitations required under applicable SIPs are not affected by dispersion techniques. According to the regulation, a dispersion technique means any method which attempts to affect the concentration of a pollutant in ambient air by: (1) Using that portion of a stack which exceed good engineering practice (GEP) stack height; (2) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or (3) increasing final exhaust gas plume rise by manipulating source process parameters and other methods, including the merging of exhaust gas streams ("merged stacks"). The stack height regulation can affect a redesignation because improvements in air quality which are due to "non-creditable" dispersion cannot form the basis for a redesignation. Therefore, USEPA has reviewed these six redesignations for consistency with the stack height regulations. This review consisted of looking at whether the ambient air concentrations, which were used as a basis for the State's redesignation requests, were influenced by any non-creditable dispersion. A

summary of the results of this review follow. Specific details are contained under each county discussion. The two dispersion techniques which were found by the State are merged gas streams and stack height greater than GEP.

1. *Merged Stacks.* USEPA redesignation policy states that designated nonattainment areas which are meeting the NAAQS either solely or partially through the use of unauthorized dispersion techniques cannot be redesignated to attainment. The stack height regulations prohibit dispersion techniques (such as merged stacks) which increase the final exhaust gas plume rise, unless certain exemptions are met. These exemptions include (a) where the source was originally designed and constructed with merged gas streams, (b) where the merging both was performed in conjunction with the installation of pollution/control equipment and did not result in an increase in allowable emissions for stacks merged before July 8, 1985, or (c) where the mergings were carried out before December 31, 1970, and are, therefore, grandfathered. (Note, only merging before this date are relevant here since the redesignations are based on data collected before July 8, 1985).

The State reviewed all major sources in the areas being redesignated for compliance with the stack height regulations. The State found that either: (a) The mergings reflect the original design and construction of the plant, (b) the mergings were done in conjunction with the installation of pollution control equipment that was required to comply with the SIP emission limitations (and did not result in an increase in allowable emissions), or (c) the mergings were carried out before December 31, 1970, and are, thus, grandfathered. Therefore, all of the merged stacks identified by the State (i.e., stacks at major sources) comply with the stack height regulations.

The stack height regulations are to insure that certain dispersion enhancing practices, such as merged stacks, do not lower the ground-level concentration of pollutants and allow sources to emit greater amounts of pollution. The State's monitoring data show attainment at ground-level of the TSP NAAQS for most areas as discussed below. However, monitored attainment may be due to the additional effect of the unreviewed minor, and reviewed major, merged stacks. Moreover, the emission limits for these sources are technology-based (i.e., not supported by air quality modeling analysis designed to assure attainment of the NAAQS), and therefore, it is possible that compliance with these limits might not be enough alone to attain the NAAQS.

USEPA has reviewed these issues, and does not believe that any increase in the final plume rise resulting from the merging of exhaust gas streams have significantly affected the monitored data here for the following reasons: First, the most culpable sources in most cases (according to the filter analyses) are fugitive TSP sources. Plume rise is not important for these low-level sources. Furthermore, because these are non-stack sources, the concept of combining exhaust gas streams is irrelevant. Second, the ambient impact from the merged stack major sources has decreased primarily because of the decrease in emissions from these sources (due to the new pollution control equipment). Thus, USEPA believes that the improvements in air quality, discussed below were not due to a "non-creditable" merged stack dispersion technique.

2. *Physical Stack Height.* According to the stack height regulations, emission limitations shall not be affected by physical stack height in excess if GEP height that was not in existence before December 31, 1970. GEP is defined as the greater of (a) 65m, (b) height based on the DEP formula, or (c) height demonstrated by a fluid model or field study. Thus, full credit is allowed for stacks that are at least 65m tall. Only stacks taller than 65m need to be reviewed for GEP credit. For the sources in the areas that we are proposing redesignation, stacks above 65m exist at only Ohio Power (OP) Gavin (Gallia County), Ohio Valley Electric Company Kyger Creek (Gallia County), Cleveland Electric Illuminating (CEI) Eastlake (Lake County), Columbia Portland Cement (Muskingum County), and OP Muskingum River (Washington County). The stacks at columbia Portland Cement and OP Muskingum River were in existence prior to December 31, 1970, and are, therefore, granfathered. For the other three plants, the air quality analyses considered by USEPA in its review took into account the GEP formula height. Thus, credit for stack height in excess of GEP was not allowed in the technical support for these redesignations.

In summary, USEPA has determined that the monitoring data which serve as the primary basis for these redesignations (as well as any existing modeling data) are not significantly affected by merged stacks or illegal stack heights. Thus, USEPA accepts the State's determination that the redesignation request for these six counties is consistent with the stack height regulations.

USEPA's discussion on the acceptability of the redesignation for Gallia, Jefferson, Lake, Muskingum, Richland and Washington follow.

I. Gallia

A. Present designation (40 CFR 81.336)

Secondary Nonattainment—Entire County.

B. Requested designation (May 16, 1983)

Attainment—Entire County.

To support its request, the State submitted data collected at the Gallipolis monitoring site for the period January-December, 1983. These data were supplemented with USEPA Storage and Retrieval of Aerometric Data (SAROAD) from January 1976, to December 1985. As justification for air quality improvement, the State submitted a list of sources which have installed air pollution control equipment.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

Gallia County is a rural county with the major sources located near the cities of Cheshire and Gallipolis. No violations of either the primary or secondary NAAQS have occurrred at the Gallipolis site since its start up in 1974 to the present. The basis of the present secondary nonattainment classification was the violation of the secondary NAAQS at the Cheshire monitoring site in 1976. This site operated from May 1974 through July 1977. the specific purpose of the Cheshire site was to evaluate TSP emissions from the construction of the Gavin Power Plant. Construction was completed at the Gavin Power Plant in 1976 and the plant is equipped with TSP air pollution control equipment. Another major source in the Cheshire area is the Kyger Creek Power Plant. It is assumed that the 1976 violation at the Cheshire site was due to the construction of Gavin and to emissions from Kyger Creek because no air pollution control equipment was installed on the plant at that time. In 1980, Kyger Creek installed electrostatic precipitators (ESPs) which resulted in emission reductions of over 8,400 tons per year. Controls on Kyger Creek have resulted in an improvement in air quality in the Cheshire area. The Kyger Creek Plant must continue to maintain their ESPs to remain in compliance with the SIP. This compliance requirement if federally enforceable.

The monitoring network is inadequate for this redesignation because the Cheshire monitor is no longer operating.

Because the Cheshire monitor was discontinued about a year after the construction of the Gavin Power Plant, the State does not have eight quarters of violation-free data. Only four quarters of violation-free data could be submitted (June 1976-July 1977). USEPA policy allows for a state-of-the-art modeling demonstration to supplement the four quarters of data to show that the basic SIP strategy is sound and that actual, enforeable emission reductions are responsible for the air quality improvement. Consequently, USEPA performed a modeling demonstration, with Kyger Creek and Gavin Power Plants operating at their maximum federally approved rates. This analysis (using the MPTER model, 1964/1971-75 meterological data, 100m receptor resolution) indicated that the Cheshire area monitored attainment of the NAAQS resulted from actual enforceable emission reductions. Thus, the Cheshire area can be redesignated to attainment based on four quarters of violation-free monitoring data, a modeled attainment demonstration, and permanent reductions in TSP due to the completion of the Gavin Power Plant construction and the installation of control equipment at Kyger Creek.

For the Gallipolis site, the entire record (1974 to 1985) of air quality monitoring data show no violations of the primary or secondary TSP NAAQS, and thus the data support the proposed redesignation. USEPA has determined that one monitor is an acceptable monitoring network given the few number of sources in Gallipolis and the rural nature of the area. The State attributed the improvement in TSP levels to the installation of an ESP at the Gallipolis State Institute. Based on monitoring data, a reference modeled attainment demonstration, and federally enforceable emissions reductions, USEPA believes an adequate explanation for air quality improvements has been provided to support the State's redesignation request. (Note, the impact of the stack height regulations was assessed and USEPA has determined that the improvements in air quality were not inconsistent with the stack height regulations).

Proposed Action

Attainment—Entire County.

II. Jefferson

A. Present designation (40 CFR 81.336)

Primary Nonattainment—Cities of Stratton, Empire, Toronto, Winterville, Steubenville, Mingo Junction, New Alexandria, Brilliant, Rayland, Tiltonville, Yorkville and Townships of Saline, Knox, Island Creek, Cross Creek, Steubenville, Wells, and Warren.

Attainment—Springfield Township.

Secondary Nonattainment—Remainder of County

B. Requested designation (November 27, 1984)

Primary Nonattainment—Cities of Stratton, Empire, Toronto, Wintersville, Steubenville, Mingo Junction, New Alexandria and Brilliant; Townships of Knox, Island Creek, Cross Creek, Wells, Steubenville, and Saline.

Attainment—Remainder of County.

To support its request, the State submitted data collected at the eight monitoring sites in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources which had installed air pollution control equipment or had been permanently shutdown.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

For the most recent eight quarters of air quality monitoring data, violations of the primary and/or secondary NAAQS for TSP were recorded in 1984 and 1985 at site 36442001I02 (Mingo Junction), site 363160013I02 (Stratton), site 366420013I01 and site 366420012I01 (Steubenville), and site 366620001I02 (Toronto). The requested primary nonattainment area includes the area around these monitors and the above mentioned Cities and Townships. No violations of the primary or secondary TSP NAAQS have been recorded at the remaining sites in the County for the last 2 calendar years (1984-1985). The adequacy of the monitoring network in the area that is being retained as primary nonattainment was not considered. USEPA notes that almost all major TSP sources are located in this retained nonattainment area.

The State attributed the improvement in TSP levels in the proposed redesignation area of Warren Township (which includes the cities of Rayland, Tiltonville, and Yorkville) around the Wheeling-Pittsburgh Steel's Yorkville Plant to the installation of air pollution control equipment at this plant. The reduction in allowable emissions due to these controls is 2074 tons per year (TPY). The installation was the result of a Federal order. USEPA determined that reduced emissions due to the economic downturn were not the reason for the air quality improvement near Wheeling-Pittsburgh Yorkville. Wheeling-Pittsburgh has operated at a fairly steady rate since the mid 70's with the only significant decrease in 1981. The 1982 and 1983 production rates were near the plant's maximum practical rates and were equal to or greater than the productions levels in 1978 when violations of the NAAQS were last measured at the Yorkville monitor. USEPA believes an adequate explanation for air quality improvement has been provided to support the State's request. Based on monitoring data and a federally enforceable emission reduction, USEPA believes that the redesignation request is approvable. (Note, the impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not inconsistent with the stack height regulations).

The redesignation, from secondary nonattainment to attainment, for the rural townships of Brush Creek, Salem, Wayne, Smithfield, and Pleasant is approvable because these townships were originally "overdesignated". No major industrial sources are located in these townships, and the one rural monitor indicates attainment.

Proposed Action

- Primary Nonattainment—Cities of Stratton, Empire, Toronto, Wintersville, Steubenville, Mingo Junction, New Alexandia and Brilliant; Townships of Knox, Island Creek, Cross Creek, Wells, Steubenville and Saline.

Attainment—Remainder of County.

III. Lake

A. Present designation (40 CFR 81.336)

Primary Nonattainment—City of Painesville.

Secondary Nonattainment—Area #1—Leroy Township, Area #2—NORTH: County Line, WEST: County Line, SOUTH: I-90, EAST: S.R. 306, excluding Town of Willowick, Area #3—Painesville Township, excluding Fairport Harbor, Grand River, and area within Painesville Township north and west of Fairport Harbor and Grand River.

Attainment—Remainder of County.

B. Requested designation (November 27, 1984)

Attainment—Entire County.

To support its request, the State submitted data collected at the ten monitoring sites in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources which have installed air pollution control equipment.

C. USEPA's Evaluation of Technical Data and Proposed Action

For the most recent eight quarters of air quality monitoring data (1984–1985), no violations of the primary or secondary NAAQS for TSP were recorded in the County except at the rural Leroy Township monitor. USEPA and OEPA do not believe that the second measured exceedance at this site should be considered in evaluating the attainment status of the area. USEPA's "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events" allows States, with USEPA's approval, to not use monitored concentrations affected by exceptional events when determining the attainment status of an area. One such event noted in the Guideline are high winds (i.e., hourly speeds≥, 30 mph) and no precipitation. Ohio submitted documentation showing that the second exceedance at the Leroy Township monitor (on May 31, 1985) was associated with winds on the order of 30 mph and no measurable precipitation. Thus, exclusion of the May 31, 1985, measured exceedance is consistent with USEPA's Exceptional Events Guideline. Thus, all valid monitored data support the redesignation. The monitoring network is acceptable for this redesignation because the monitors are located near the major TSP sources. The State attributed the improvement in TSP levels in Lake County to installation of air pollution control equipment at CEI Eastlake Power Plant and at Painesville Municipal Power and permanent source shutdowns at Erie Coke and Chemical and Diamond Shamrock. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements. The reduction in actual emissions at CEI's Eastlake Power Plant is due to the installation of pollution controls. Emissions dropped from 7453 TPY in 1981 to 1794 TPY in 1983. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not inconsistent with the stack height regulations.

Based on monitoring data, an adequate monitoring network, permanent source shutdowns and federally enforceable emission reductions, USEPA believes an adequate explanation for air quality improvements in the County have been provided to support the State's request.

Proposed Action

- Attainment—Entire County.

IV. Muskingum

A. Present designation

Secondary Nonattainment—Entire County.

B. Requested designation

Attainment—Entire County.

To support its request, the State submitted data collected at the two monitoring sites in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources which have installed air pollution control equipment and have been permanently shutdown.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

For the most recent eight consecutive quarters of air quality monitoring data, no violations of the primary or secondary TSP NAAQS were recorded at the two monitoring sites currently operating in the County. The State attributed improvement in TSP levels to Columbia Cement, a major source in southwestern Muskingum County, improving the operation and maintenance of their air pollution control equipment. Also, Ohio Ferro Alloys in Philo permanently shutdown three of their five furnaces. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements. Actual emissions from Ohio Ferro Alloys decreased over 200 TPY as a result of the shutdowns.

The entire county was originally designated secondary nonattainment based on violations only at the Philo site (364640001F05), even though no violations were recorded at the Janesville sites (367780002F01 and 367780004F01) since 1976. This original designation for the County was overly broad. Muskingum County is rural with a population of 82,200 and total federally allowable emissions from major sources of only 900 TPY. Of the 900 TPY, 400 TPY are due to Columbia Cement. Thus, the entire county, except for the Philo and the Columbia Cement areas, is "overdesignated."

The monitoring network was determined to be incomplete because there were no monitors in southwestern Muskingum County where Columbia Cement is located. The monitor at Philo was not and is not representative of the air quality in the vicinity of Columbia Cement. Therefore, the State submitted a screening analysis (using PTMAX) for Columbia Cement at the maximum allowable emissions. The sum of the maxiumum modeled 24-hour impact and an appropriate background value (approximately 100 $\mu g/m^3$) was less than the 24-hour secondary NAAQS, thus, demonstrating attainment of the NAAQS. USEPA proposes to accept the redesignation from secondary nonattainment to attainment based on modeling alone. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not inconsistent with the stack height regulations.

Based on monitoring and modeling data and permanent source shutdowns, USEPA believes an adequate explanation for air quality improvements has been provided to support the State's request.

Proposed Action

- Attainment—Entire County.

V. Richland

A. Present designation (40 CFR 81.336)

Primary Nonattainment—Entire County.

B. Requested designation (May 16, 1983)

Primary Nonattainment—Area within a line from West 4th Street and Bowman Street, east on 4th Street to U.S. 42, northeast on 9th Avenue, north to Grace Street, west to Newman Avenue, north to U.S. 30, west to Bowman Street, south to 4th Street.

Secondary Nonattainment—Remainder of County.

To support its request, the State submitted data collected at three sites in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources that have reduced emissions.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The County's monitoring network in 1980 consisted of five monitors. Two of the monitors were discontinued in 1981. For the most recent eight quarters of air

quality monitoring data (1984–1985), no violations of the primary NAAQS for TSP have been recorded at the three existing monitors in the county (36384010H01, 363840007F01, 365740002H01). However, nonattainment of the primary NAAQS was measured at Monitors Nos. 363840007F05 in 1980, 363840009H01 in 1980, and 363840001H01 in 1980 and 1981 in the City of Mansfield. (Note, the latter two monitors were discontinued in 1981.) The requested retained primary nonattainment area includes the area around these monitors. No violations of the primary NAAQS for TSP have been recorded at the three remaining sites in the County for the last 2 calendar years. The monitoring network for this redesignation is acceptable because the monitors are located near the major sources. The State attributed the improvement in TSP levels to the reduction of emissions due primarily to a fuel conversion at the State Reformatory, the installation of federally enforceable controls at Ohio Brass and Fisher-Body GMC, and permanent shutdowns at Shelby Municipal Light Plant, C and P Metals, Mansfield Tire and Rubber Company, and Taylor Metal Products. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not inconsistent with the stack height regulations. Based on monitoring data, an adequate monitoring network and, federally enforceable emission reductions and permanent source shutdowns, USEPA believes an adequate explanation for air quality improvement has been provided to support the State's request.

Proposed Action

• Primary Nonattainment—Area within a line from West 4th Street and Bowman Street, east on 4th Street to U.S. 42, northeast on 9th Avenue, north to Grace Street, west to Newman Avenue, north to U.S. 30, west to Bowman Street, south to 4th Street.

Secondary Nonattainment—Remainder of County.

VI. Washington

A. Present designation (40 CFR 81.336)

Secondary Nonattainment—Entire County.

B. Requested designation

Attainment—Entire County.

To support its request, the State submitted data collected at the two monitoring sites in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources that have installed air pollution control equipment or have shutdown.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The basis of the present Washington County secondary nonattainment classification was violations at the State's two monitoring sites in Belpre and Marietta. No violations of the primary or secondary TSP NAAQS have occurred at these sites for the most recent eight consecutive quarters of data (1984–1985). The State attributed the improvements in TSP levels at these two monitors to the replacement of an old asphalt plant with a new one meeting New Source Performance Standards (NSPS) at the Mark Williams Plant, and the installation of control equipment at Shell Chemical. Thus, the air quality monitoring data and evidence of air quality improvement support the requested designation for the areas near the Belpre and Marietta sites. However, USEPA has determined that the monitoring network, consisting of the two sites, is not adequate to support redesignating all of Washington County because there are no monitors located near two major TSP sources, the Muskingum River Power Plant and Elkem Metals (formerly Union Carbide). The State's two monitoring sites in Belpre and Marietta are not and were not representative of the air quality near these two major TSP sources.

To assess the air quality status in the vicinity of the Muskingum River Power Plant and the Elkem Metals plant, USEPA conducted a state-of-the-art dispersion modeling analysis. For the Muskingum River Power Plant, located in Waterford Township, USEPA applied the MPTER model, using 1972–1975, 1977 meteorological data and 100m receptor resolution. The modeling indicated that the TSP NAAQS were being attained in the area of the Muskingum River Plant.

For the Elkem Metals plant, located in Warren Township, the State originally submitted modeling utilizing an annual background concentration of 57 ug/m^3. The State later maintained that an annual background concentration of less than 50 ug/m^3 would be more appropriate for the Elkem Metals region. Based on further information submitted by the State concerning the revised background concentrations, USEPA agrees that this lower value is acceptable. Utilizing the revised background concentration, USEPA performed a modeling analysis for the area. (Note, this modeling assumed credit for stack merging at Elkem Metals. USEPA now believes that merged stack credit may not be acceptable since no justification for credit has been provided by the State.) Since the modeling predicted violations of the secondary TSP NAAQS, even with the lower background, USEPA is proposing to retain Warren Township as secondary nonattainment. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not inconsistent with the stack height regulations, except for Elkem Metals. Based upon monitoring and modeling data, and federally enforceable emission reductions, USEPA believes an acceptable explanation for air quality improvements has been provided to support redesignation of Washington County, except Warren Township, to attainment of the NAAQS for TSP.

Proposed Action

• Secondary Nonattainment—Warren Township.

Attainment—Remainder of County.

Note, the source shutdowns (both total and partial facility) identified in this notice were relied on by the State to explain the improvement in these areas and, thus, are an integral part of the State redesignation request. Since these shutdowns are a necessary condition for the redesignations, these emission reduction credits are hereby used up and cannot be applied again. As a result, if these particular sources wish to resume operation, then they must first satisfy the applicable new source review requirements.

All interested parties are invited to submit comments on this proposed action notice. USEPA will consider all comments received within 30 days of publication of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Authority: 42 U.S.C. 7401–7642.

Dated: March 31, 1987.

Peter Wise,

Acting Regional Administrator.

[FR Doc. 87–24570 Filed 10–22–87; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 52, No. 205
Friday, October 23, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services; Public Meetings

ACTION: Special Committee on Financial Services; Notice of Public Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of two meetings of the Special Committee on Financial Services of the Administrative Conference of the United States. The committee has scheduled these meetings to develop a proposed recommendation on Adjudication Practices and Procedures of the Federal Bank Regulatory Agencies, based upon a study conducted for the Conference by Professor Michael P. Malloy. Copies of the consultant's report may be obtained from the contact person named in this notice.

DATE: Friday, November 6, 1987 at 2:00 pm, and Friday, November 20, 1987 at 2:30 pm.

Location: Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

Public Participation: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meetings. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meetings will be available on request.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone (202) 254-7065.

Dated: October 20, 1987.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 87-24544 Filed 10-22-87; 8:45 am]

BILLING CODE 6110-01-M

The Discretionary Function Exception to the Federal Tort Claims Act

AGENCY: Administrative Conference of the United States.

ACTION: Notice of inquiry.

SUMMARY: The Administrative Conference's Committee on Governmental Processes is studying federal agency experience in use of the discretionary function exception to the Federal Tort Claims Act. Comments are sought on whether there are problems in the implementation of the exception and whether statutory changes are needed. Comments are also invited on a draft report available from the Conference.

DATE: Comments are due by November 18, 1987.

ADDRESS: Send comments to David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, 202-254-7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Governmental Processes has under consideration a draft report on the so-called "discretionary function exception" to the Federal Tort Claims Act (FTCA). The draft report was written by Professor Ronald A. Cass of the Boston University School of Law. The committee will consider formulating recommendations concerning this subject, and desires to obtain further information from federal agencies and from other interested persons.

Since its passage in 1947, one provision in the FTCA, 60 Stat. 812, has been a continuing source of controversy. The discretionary function exception amends the jurisdictional grant in the FTCA, codified at 28 U.S.C. 1346(b) (1982), by making the Act's waiver of sovereign immunity inapplicable to "[a]ny claim * * * based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty * * * whether or not the discretion involved [was] abused." 28 U.S.C. 2680(a) (1982).

Interpretation of this exception to jurisdiction over tort claims against the United States has critical importance for the scope of federal government exposure to liability. Over the forty years that the FTCA has been in effect, the quoted language has been subject to varying interpretations, and the Supreme Court has offered a number of differing tests for applying the exception. The result is a lack of clarity and a multiplicity of lower court litigation over its meaning.

While the legislative history of the exception provides only indirect guidance as to the intended meaning, it appears that Congress was concerned with the potential for overly cautious behavior on the part of government employees if tort liability were a perceived result of administrative or regulatory activity.

The committee is considering whether to recommend that Congress amend the FTCA to clarify congressional intent with respect to the scope of the exception, or whether other possible recommendations would be useful. To assist the committee, it would be helpful to receive comments from interested persons or organizations with respect to the following questions:

- Is there a problem with the discretionary function exception of the FTCA, as currently interpreted by the courts? Do the results appear to differ from what Congress intended?
- Are statutory changed needed in the discretionary function exception to clarify congressional intent or to make the results more consistent or satisfactory from a public policy perspective? If so, what specific clarifying changes would be helpful?

The committee also invites comments on Professor Cass' draft report. Copies are available from the Office of the Chairman of the Administrative Conference.

The committee plans to discuss this subject in the light of any comments that may be received at its meeting on Monday, November 30. This meeting will take place at the office of Covington & Burling, 1201 Pennsylvania Avenue NW., Washington, DC (11th floor conference room). Please notify the contact person by November 25 if you wish to attend. At that time, the committee will decide whether to formulate any recommendations for consideration by the Administrative

Conference at its Plenary Session scheduled for December 17 and 18, 1987.

Dated: October 21, 1987.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87-24750 Filed 10-22-87; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Cooperative Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987, (Pub. L. 92-463, 86 Stat. 770-776) U.S. Department of Agriculture announces the following meeting:

Name: Cooperative Forestry Research Advisory Council
Date: December 9-10, 1987
Time: 9:00 a.m.-5:00 p.m.
Place: Department of Agriculture, Room 107-A, Administration Building, Washington, DC

Type of meeting: Open to public. Persons may participate in the meeting if time and space permit.

Comments: The public may file written comments before or after the meeting by contacting the person below.

Purpose: The council will be deliberating the McIntire-Stennis Forestry Research program with particular emphasis on forestry research planning, annual distribution of funds, and administration of McIntire-Stennis Cooperative Forestry Research program.

Contact person for agenda and more information: Dr. Boyd W. Post, Cooperative State Research Service, Room 123, Justin Smith Morrill Building, U.S. Department of Agriculture, Washington, DC 20251; telephone (202) 447-2016.

Dated: October 9, 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87-24608 Filed 10-22-87; 8:45 am]

BILLING CODE 3410-22-M

National Agricultural Statistics Service

Livestock Program Changes

Notice is hereby given that the National Agricultural Statistics Service (NASS) plans to change the livestock estimating program beginning in 1988.

The reference date of the midyear *Cattle* report will be moved from June 1 to July 1. The report had a reference date of July 1 prior to 1987. The July 1988 report will contain U.S. inventory of all cattle and calves by classes and expected calf crop.

Comments from interested parties regarding this action should be sent to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division, Room 5906-S, NASS/USDA, Washington, DC 20250.

Dated: October 20, 1987.

Charles E. Caudill,

Administrator.

[FR Doc. 87-24611 Filed 10-22-87; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 5-87]

Proposed Foreign-Trade Zone; San Diego, CA; Amendment of Application

Notice is hereby given that the application submitted by the City of Diego, California, requesting authority to establish a general-purpose foreign-trade zone in the Otay Mesa Planning Area of San Diego (52 FR 20634, 6-2-87) has been amended to include the 312-acre De La Fuente Business Park, located within the planning area. It is situated at Airway and Media Roads and is owned by Border Business Park, Inc. The application, as discussed during the July 1, 1987, public hearing, remains otherwise unchanged.

The comments period is reopened until November 30, 1987.

The application and amendment material are available for public inspection at the following locations:

U.S. Dept. of Commerce District Office, 6363 Greenwich Drive, San Diego, CA 92122

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Dept. of Commerce, Rm. 1529, 14th and Pennsylvania NW., Washington, DC 20230

Dated: October 14, 1987.

[FR Doc. 87-24541 Filed 10-22-87; 8:45 am]

BILLING CODE, 3510-DS-M

[Docket No. 21-87]

Proposed Foreign-Trade Zone; Greater Baton Rouge, LA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the greater Baton Rouge Port Commission, an agency of the State of Louisiana, requesting authority to establish a general-purpose foreign-trade zone in the Baton Rouge area, within the Baton Rouge Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 13, 1987. The Port Commission is authorized to make the proposal under Title 51, Section 62, of the Louisiana Revised Statutes of 1950.

The proposal will involve 4 sites totaling 2,674 acres. Site 1 will consist of 16 acres within the Port's terminal area, located on Ernest Wilson Drive, just inside the south city limits of the City of Port Allen. Site 2 (2 parcels) is a 244-acre tract of light industrial land in East Baton Rouge Parish, known as the Industriplex Park, owned by Baton Rouge Industriplex, Inc., and Industriplex Park Subdivision, Inc. Site 3, owned by Sun Plus Development, Inc., comprises 580 acres at the Sun Plus Industrial Park located on Louisiana Highway 1, Port Allen. Site 4 is an 1,834-acre integrated petrochemical complex, owned by Dow Chemical, U.S.A., on Louisiana Highway 1, one mile north of the City of Plaquemine, within the Parishes of West Baton Rouge and Iberville.

The application contains evidence of the need for zone services in the Baton Rouge area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of agricultural products, chemicals, ceramic tile and marble and electrical wire and cable. Specific manufacturing approvals are not being sought at this time. Requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., (Chairman) Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and Colonel Lloyd K. Brown, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, Louisiana 70160-0267.

As part of its investigation, the examiners committee will hold a public hearing on December 3, 1987, beginning at 9 a.m., in Room 101, West Baton Rouge Police Jury Building, 880 North Alexander Avenue, Room 101, Port Allen, Louisiana 70767.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify

the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by November 25. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 15, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Area/Port Director's Office, U.S. Customs Service, Hoover Building, Suite 218B, 8312 Florida Boulevard, Baton Rouge, Louisiana 70806

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: October 16, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-24542 Filed 10-22-87;8:45am]

BILLING CODE 3510-DS-M

International Trade Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held November 10, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

Agenda:

General Session:

1. Introduction of Members and Visitors.
2. Presentation of Papers or Comments by the Public.
3. ICOT Proposal on 1565.
4. Discussion on Status of Rule-Making.
5. Discussion on Unilateral Controls.
6. Flow Chart Presentation on Technical Data Part 379.
7. Graphic Display Presentation by Tektronix Corporation.
8. Presentation on Recording Media Manufacturing by Mountain Computer Company.
9. Status of New Decontrol Parameters.
10. Discussion of Various Regulatory Interpretations.

Executive Session:

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Date: October 20, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-24605 Filed 10-22-87; 8:45 am]

BILLING CODE 3510-DT-M

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held November 18, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Report on New Committee Members.
5. Summary of Committee Chairman's Meeting.
6. Comments on Materials for Superconductors.
7. Discussion on Ceramic, Ceramic Composites, their Constituents, Availability, and Commercial Status.
8. Controls on Advanced Metals Powders.
9. Review of Commodity Control List and Priorities.
10. Committee Plans for 1988.

Executive Session:

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 13, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call Ruth D. Fitts, 202-377-2583.

Date: October 19, 1987.

Margaret A Cornejo,

Director, Technical Support Staff, Office of Technology and Policy.

[FR Doc. 87-24606 Filed 10-22-87; 8:45 am]

BILLING CODE 3510-DT-M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held November 5, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Parts of Sections 5, 10, 12, and 15 of the MCTL.
5. New Business.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Date: October 19, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-24540 Filed 10-22-87; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Program Applications; Hawaii

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $628,118 for the project performance period of March 1, 1988 to February 28, 1989. The MBDC will operate in the Honolulu Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $533,900 in Federal funds and a minimum of $94,218 in non-Federal funds (which can be a combination of cash, in-kind contributions and fees for services).

The I.D. Number for this project will be 09-10-88003-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Departmentof Commerce, 221 Main Street, Room 1280, San Francisco, California 94105.

November 6, 1987 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing date: The closing date for applications is November 30, 1987. Applications must be postmarked by midnight November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Xavier Mena,

Regional Director, San Francisco Regional Office.

October 16, 1987.

11.800 Minority Business Development (catalog of Federal Domestic Assistance)

[FR Doc. 87-24556 Filed 10-22-87; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting has several purposes. Panel members will start work

on reports prepared by subcommittees on the National Office, Law and Policy, and Recertifications. They will hear from the Council of Sea Grant Directors and the Director of the National Sea Grant College Program on the reauthorization bill, and also from the National Association of State Universities and Land Grant Colleges Marine Division. There will also be presentations by Sea Grant technical staff concerning the Social Science and Marine policy Office and the Oceanic and Atmospheric Research Office of Climatic and Atmospheric Research.

DATE: The announced meeting is scheduled during three days: November 8, 9, and 10, 1987, as follows: November 8, 1987, 3:00–4:30 p.m.; November 9, 1987, 8:30–11:30 a.m., and 1:00–5:30 p.m.; and November 10, 1987, 10:00–12:00 noon.

ADDRESS: The meeting will be held November 8, 1987 at:

J.W. Marriott, Longworth Room, 1331 Pennsylvania Avenue NW., Washington, DC 20004

and

November 9th and 10th at: The National Assoc. of State Universities & Land, Grant Colleges Conferences Room, Room 710, One Dupont Circle NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Shephard, National Sea Grant College Program, R/SEL, 6010 Executive Boulevard, Room 826, Rockville, Maryland 20852 (301) 443–8886.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Dirctor of the National Sea College Program with respect to operations under the act, and such other matters as the Secretray refers to the Panel for review and advice.

The agenda for the meeting is:

Sunday, November 8, 1987

3:00–4:30 p.m.

A. Meeting with NSGCP office staff and Council of Sea Grant Directors re: reauthorization bill.

Monday, November 9, 1987

8:30–11:00 a.m.

B. Presentation and discussion of the subcommittee reports.

1:00–3:30 p.m.

C. Continuation of discussion and presentations by Sea Grant Office of Social Science and Marine Policy, and OAR's Office of Climatic Research.

3:30–5:30 p.m.

D. Meeting with new NOAA/DOC leadership.

Tuesday, November 10, 1987

10:00–12:00 noon

E. Planning for future activites and next meeting.

The meeting will be open to the public.

Date: October 20, 1987.

Alan R. Thomas,

Deputy Assistant Administrator.

[FR Doc. 87-24547 Filed 10-22-87; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Burma

October 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 26, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the existing twelve-month restraint limit for Category 340/640 and to establish a new limit for Category 340/341/640/641/840 for the period January 1, 1987 through December 31, 1987.

Background

A CITA directive dated May 20, 1987 (52 FR 19562) established a limit for cotton and man-made fiber textile products in Category 340/640, produced or manufactured in Burma and exported during the twelve-month period which began on January 30, 1987 and extends through January 29, 1988.

During consultations held July 15 and 16, 1987 between the Governments of the United States and the Socialist Republic of the Union of Burma, agreement was reached to establish a new bilateral agreement concerning the trade in cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Burma and exported during the period January 1, 1987 through December 31, 1990. The new agreement establishes a specific limit for cotton, man-made fiber, silk blend and other vegetable fibe textiles and textile products in Category 340/341/640/641/840, produced or manufactured in Burma and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Fedral Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

October 20, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on May 20, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products in Category 340/640, produced or manufactured in Burma and exported during the twelve-month period which began on January 30, 1987 and extends through January 29, 1988.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile

Agreement, effected by exchange of notes dated August 25, 1987 and September 11, 1987, between the Governments of the United States and the Socialist Republic of the Union of Burma; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 26, 1987, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following category, produced or manufactured in Burma and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Category	12-mo limit [1]
340/341/640/641/840	250,000 dozen of which not more than 200,000 dozen shall be in Category 340/640/840.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

Also effective on October 26, 1987, you are directed to charge the following amounts to the limit established in this directive for Category 340/341/640/641/840. These charges are for goods imported during the period which began on January 1, 1987 through August 31, 1987.

Category	Amount to be charged
340	50,235 dozen.
341	
640	55,071 dozen.
641	
840	

In carrying out this directive, entries of textile products in the foregoing category, produced or manufactured in Burma and exported before January 1, 1987 shall not be subject to this directive.

The limit is subject to adjustment in the future pursuant to the provisions of the bilateral textile agreement, which provide, in part, that: (1) growth of 6 percent shall be available in each future year through 1990. Carryover of 11 percent and carryforward of 6 percent shall be available, with the combination of carryover and carryforward not to exceed 11 percent; (2) no carryfoward shall be available in the last agreement year.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-24585 Filed 10-22-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Limit for Certain Cotton, Wool, and Man-Made Fiber Sweaters Assembled in Guam From Imported Parts, Effective November 1, 1987

October 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 2, 1987. For further information contact Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish a restraint limit for sweaters in Categories 345, 445, 446, 645 and 646 which are assembled in Guam and exported during the twelve-month period which begins on November 1, 1987 and extends through October 31, 1988.

Background

On October 31, 1986, a notice was published in the **Federal Register** (51 FR 39782) announcing that, effective on November 1, 1986, cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the U.S. insular possession of Guam and certified to have been assembled in Guam, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 163,216 dozen. This limited exception was to be effective for sweaters exported from Guam during the period which began on November 1, 1986 and extends through October 31, 1987.

The purpose of this notice is to advise the public that this exception is being continued for goods exported on and after November 1, 1987 and extending through October 31, 1988. The amount is being increased to 169,745 dozen.

A certification will continue to be required and will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A fascimile of the certification stamp was published in the **Federal Register** on March 4, 1985 (50 FR 8649).

For those sweaters properly certified, no export visa of license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports form the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 169,745 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29,1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 2, 1987, you are directed to permit entry or withdrawal from warehouse for consumption in the United States of 169,745 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645, and 646, the product of any foreign

country or foreign territory, as determined under Customs Regulation Part 12, Section 12.130 and which have been certified as assembled in Guam and exported to the United States during the twelve-month period beginning on November 1, 1987 and extending through October 31, 1988. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp has been provided.

Imports of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 assembled in Guam, but not of Guam origin, which are not accompanied by a certification and those in excess of 169,745 dozen exported during the twelve-month period beginning on November 1, 1987 and extending through October 31, 1988 will require the apppropriate visa or export license from the country of origin and will be charged to any applicable quota.

The Committee for the Implementation of Textile Agreements has determined that the action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-24586 Filed 10-22-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 commodities and a services produced or provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before November 23, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Cover, Cushion Assembly

2540-01-245-2524
2540-01-245-2525
2540-01-245-2526
2540-01-245-6212

Panel Marker, Aerial Liaison

8345-00-174-6865

Services

Commissary Shelf Stocking

Custodial and Warehouse Service, Kirtland Air Force Base, NM
Commissary Warehouse Service, Maxwell Air Force Base, AL

C.W. Fletcher,

Executive Director.

[FR Doc. 87-24603 Filed 10-22-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1987 a commodity and services provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 23, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 22, 1987 and August 10, 1987 the Committee for Purchase for the Blind and Other Severely Handicapped published notices (52 FR 19376 and 29564) of proposed additions to and deletion from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46 through 48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

(a) The action will not result in any additional reporting, recordkeeping or other compliance requirements.

(b) The action will not have a serious economic impact on any contractors for the commodity and services listed.

(c) The action will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1987:

Commodity

Sewing Kit

8315-01-222-0679

Service

Janitorial/Custodial

John F. Kennedy Federal Building, Low Rise, Boston, MA

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46 through 48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following service is hereby deleted from the Procurement List 1987: Commissary Shelf Stocking and Custodial Service, Randolph Air Force Base, TX.

C.W. Fletcher,

Executive Director.

[FR Doc. 87-24604 Filed 10-22-87; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday,

November 3, 1987: Tuesday, November 10, 1987; Tuesday, November 17, 1987; and Tuesday, November 24, 1987 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-382. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Thomas J. Condon,

Acting Division Chief, Directives Division.

[FR Doc. 87-24600 Filed 10-22-87; 8:45 am]

BILLING CODE 3810-01-M

Organization of the Joint Chiefs of Staff; Joint Strategic Target Planning Staff (JSTPS), Scientific Advisory Group: Closed Meeting

AGENCY: Joint Strategic Target Planning Staff, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The Director, Joint Strategic Target Planning Staff has scheduled a closed meeting of the Scientific Advisory Group.

DATE: The meeting will be held on 18 and 19 November 1987.

ADDRESS: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: The Joint Strategic Target Planning Staff, Scientific Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues which relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified Top Secret in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. 552b(c)(1).

Thomas J. Condon,

Acting Division Chief, Directives Division.

[FR Doc. 87-24601 Filed 10-22-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

National Energy Extension Service Advisory Board; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463), 86 Stat. 770), notice is hereby given of the following advisory committee meeting.

Name: National Energy Extension Service Advisory Board.

Date and Time: Thursday, November 19, 1987; 8:00 a.m.-5:00 p.m.; Friday, November 20, 1987; 8:00 a.m.-12:00 Noon.

Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202-586-8290.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda: November 19, 1987.

- Overview of EES Programs.
- Briefings on Energy Extension Service Programs by Board members.
- Public Comment (10 minute rule)

November 20, 1987.

- Issues for Ninth Annual Report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make real statements pertaining to agenda items should contact Susan D. Heard at 202-586-8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on October 20, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-24630 Filed 10-22-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Ball Marketing, Inc., Charles Goss, Baker R. Littlefield, and Robert L. McAdams

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration ("ERA") announces a proposed Consent Order between the Department of Energy ("DOE") and Ball Marketing, Inc. ("BMI"), Charles Goss, Baker R. Littlefield, and Robert L. McAdams (collectively "Respondents"). This Consent Order would resolve Respondents' potential liability for DOE regulatory violations during the period August 17, 1973 through January 27, 1981. An enforcement proceeding against BMI was commenced on November 24, 1984, by issuance of a Proposed Remedial Order ("PRO") which alleged that the firm had overcharged by $570,728.38 in crude oil resales during the period January 1974, through March 1976. Respondents have disputed ERA's audit findings and deny any overcharge liability.

EPA proposes that Respondents' liability for potential overcharges and interest be settled by payment of $700,000.00 over a period of three years, plus interest on deferred payments. This proposed settlement reflects negotiated compromises present in every settlement, including assessments of litigation risks in significant areas of dispute between ERA and Respondents. ERA will direct that these monies be deposited in a suitable account for appropriate distribution by DOE.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice. Comments should be addressed to: Ball Marketing Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585.

ERA will consider the comments received from the public in determining whether to make final the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Consent Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Consent Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written oral comments, aw well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Noah S. Baer, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4432.

SUPPLEMENTARY INFORMATION: BMI is a crude oil reseller subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price regulations at 10 CFR Part 212. The firm's first resale of crude oil, which occurred in January 1974, was made in the name of Ball Marketing Enterprise ("BME"), a partnership which was the predecessor of BMI. After audit, the ERA concluded that BME/BMI overcharged in the resale of crude oil in the Louisiana-Texas area during the period January 1974 through March 1976, in violation of the DOE regulation found at 10 CFR Part 212, Subpart F.

As noted, ERA issued a PRO to BMI on November 24, 1984. ERA subsequently moved, in PRO proceedings before DOE's Office of Hearings and Appeals, to join as parties also liable for the overcharges the individuals who were the general partners in BME and the owners of its corporate successor, BMI. These individuals, Messrs. Goss, Littlefield, and McAdams, were subsequently joined as parties jointly and severally liable with BMI in their individual capacities for the overcharges alleged in the PRO. *Ball Marketing*, Inc., 15 DOE ¶83,031 (1987).

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the audit findings in litigation, and considering the asserted facts and appropriate settlement compromises related to those issues.

In addition to the analysis of potential litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the legal and factual issues, and the time and expense required for the government to fully litigate every issue. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $700,000.00, plus interest, is an appropriate settlement. Given all these factors, ERA has made a preliminary determination that this settlement is in the public interest.

The settlement calls for Respondents to make payment of $175,000 on December 1, 1987, with three further annual payments of $175,000 (plus interest on unpaid balances accruing after December 1, 1987) on December 1 of 1988, 1989 and 1990, in full discharge of all of Respondents' obligations under the DOE price and allocation regulations. The restitutionary sum would be paid to DOE for ultimate distribution pursuant to the Special Refund Procedures set forth in 10 CFR Part 205, Subpart V, and the DOE's Modified Statement of Restitutionary Policy as set forth at 51 FR 27899 (Aug. 4, 1986).

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above. All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on October 16, 1987.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Adminstration.

[FR Doc. 87–24548 Filed 10–22–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–52–NG]

Windward Energy & Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 25, 1987, of an application filed by Windward Energy & Marketing Company (Windward Energy) for blanket authorization to import up to 450 Bcf from date of first delivery until January 1, 1993. Windward Energy, an Oklahoma Corporation located in Tulsa, Oklahoma, would primarily import gas for California industrial users, but also for its own account or act as a broker for other U.S. purchasers as well as Canadian suppliers. The specific terms of each import sale including price and volume would be negotiated monthly or quarterly and interruptible deliveries to the various end-users would be based on monthly nominations. Volumes and transportation costs would be flexible due to capacity limitations on Pacific Gas Transmission's (PGT) system. Windward Energy intends to utilize existing pipeline facilities for transportation of the volumes imported.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 23, 1987.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration,

Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that the ERA may limit term of any blanket authority granted in this docket and may proportionately reduce the volumes. Further, the ERA will condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program. Windward Energy has requested that its authorization be granted on an expedited basis.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., November 23, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Windward Energy's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 19, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-24550 Filed 10-22-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-41-NG]

Goetz Oil Co.; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Goetz Oil Company (Goetz) blanket authorization to import natural gas. The order issued in ERA Docket No. 87-41-NG authorizes Goetz to import up to 140 Bcf of natural gas over two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 19, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-24549 Filed 10-22-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and time: November 23, 1987-9:00 a.m.-5:00 p.m., November 24, 1987-9:00 a.m.-12:00 noon.

Place: Conference Room A-410 U.S. Department of Energy, Germantown, Maryland 20545.

Contact: George G. Duda, Office of Health and Environmental Research (ER-72), Office of Energy Research, Department of Energy, Washington, D.C. 20545, Telephone: 301/353-3651.

Purpose of the committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative agenda: Briefings and discussions of:

November 23, 1987

- Report from HERAC Subcommittee on Radiation Biology.

• Report from HERAC Subcommittee on Biotechnology.
• Public comment (10 minute rule).

November 24, 1987

• New Business Discussion.
• Public comment (10 minute rule).

Public participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George G. Duda at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC., on October 16, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-24631 Filed 10-22-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-28-000, et al.]

Arizona Public Service Co., et al.; Electric Rate and Corporate Regulation Filings

October 19, 1987.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER88-28-000]

Take notice that on October 14, 1987, Arizona Public Service Company (APS) tendered for filing separate Wheeling and Administrative Service Agreements and Wholesale Power Agreements between APS and Harquahala Valley Power District and Buckeye Water Conservation and Drainage District ("Harquahala" and "Buckeye" respectively, "Districts" collectively).

These new Agreements provides for APS to wheel the Districts preference power allocations from various governmental agencies at a rate level already accepted by the Commission for similar type service. The Wholesale Power Agreements provide for partial requirements service at a rate level already accepted by the Commission for similar service.

APS, with the concurrence of Harquahala, requests a waiver of the Commission's Notice Requirements so that service to Harquahala may begin October 10, 1987.

Copies of this filing have been sent to Harquahala, Buckeye, Harquahala and Buckeye's attorney's, Harquahala's consultant, and the Arizona Corporation Commission.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER87-568-000]

Take notice that on October 9, 1987, Arkansas Power & Light Company (AP&L) tendered for filing pursuant to Commission deficiency letter dated September 10, 1987 a compliance filing reflecting proposed rates of a 34% federal income tax rate for the months of September through December 1987.

AP&L requests that this filing be made effective as of September 1, 1987 in accordance with the provision of Rate Schedule M33 and M33A. To the extent necessary, AP&L requests that waiver of the Commission's notice requirements be granted.

Copies of the filing were served upon each person designated on the official service list in this proceeding.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Company

[Docket No. ER88-19-000]

Take notice that on October 8, 1987, Central Vermont Public Service Company (Central Vermont) tendered for filing an Actual Cost Report for 1986 Service Year Billings. In accordance with Article IV, Section A(2) of the agreement between Central Vermont and the Vermont Electric Generation and Transmission Cooperative, Inc. (VG&T) under which Central Vermont transmits the output of the VG&T's 4.0 MW hydroelectric generating facility located in North Hartland, Vermont via a 12.5 kV circuit owned and maintained by Central Vermont to Central Vermont's substation in Quechee, Vermont, Central Vermont submits the following:

Exhibit 1 Revenue Comparison setting forth the forecast and actual revenue for 1986.

Exhibit 2 Cost Report computing the forecast costs for 1986.

Exhibit 3 Cost Report computing the actual costs for 1986.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Indianapolis Power & Light Company

[Docket No. ER88-8-000]

Take notice that on October 2, 1987, Indianapolis Power & Light Company (ILP) tendered for filing a rate schedule in the form of Amendment No. 1, effective as of July 1, 1987, to the Agreement dated as of October 9, 1986 which sets forth the rates, charges, terms and conditions for wholesale electric service to Boone County Rural Electric Membership Corporation (Boone REMC) which is the only REMC IPL serves. The new Rate REMC attached to said Agreement No. 1 as Exhibit B thereto is intended to supersede and replace Rate REMC attached to said Agreement as Exhibit B thereto and which is designated Indianapolis Power & Light Company Rate Schedule FERC No. 21, as supplemented.

The only customer affected by the proposed new Rate REMC is Boone REMC, which has executed said Amendment No. 1 and has concurred in this filing.

IPL states that the structure of the new Rate REMC has not been changed from the present rate and that the only substantive change in the new rate is to decrease the monthly kilowatt demand charge to reflect the decrease in Federal corporate income tax resulting from the Tax Reform Act of 1986.

IPL further states that copies of this filing, together with exhibits, were sent to Boone REMC and to the Indiana Utility Regulatory Commission.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Power and Light Company

[Docket No. ER88-24-000]

Take notice that on October 13, 1987, Kansas Power and Light Company (KPL) tendered for filing proposed changes in its Schedules of Rates and Charges applicable to certain requirements and transmission service customers pursuant to the authority granted by the Commission's Order No. 475 in Docket No. RM87-4-000 and Part 35, Title 18, Chapter 1 of the Code of Federal Regulations. The proposed changes affect three (3) wholesale cooperative customers and thirty-eight (38) wholesale municipal customers of KPL

located in the State of Kansas, as follows:

Wholesale cooperative customer	FERC rate schedule No.
1. Doniphan Electric Cooperative Assoc., Inc	220
2. Kaw Valley Electric Cooperative Company, Inc	218
3. Nemaha-Marshall Electric Cooperative Assoc., Inc	219

Wholesale full requirements municipal customer	FERC rate schedule No.
1. City of Scranton	212
2. City of Wathena	217
3. City of Muscotah	222
4. City of Severence	224
5. City of Altamont	225
6. City of Marion	228
7. City of Enterprise	230
8. City of Chapman	231
9. City of Eudora	236
10. City of DeSoto	232
11. City of Axtell	227
12. City of Robinson	233
13. City of Hillsboro	234
14. City of St. Marys	195
15. City of Vermillion	196
16. City of Alma	197
17. City of Centralia	198
18. City of Elwood	200
19. City of Troy	201
20. City of Toronto	203
21. City of Morrill	204
22. City of Horton	206
23. City of Lindsborg	207
24. City of Seneca	208
25. City of Waterville	210
26. City of Girard	238

Wholesale partial requirements municipal customer	FERC rate schedule No.
1. City of Clay Center	241
2. City of Wamego	184
3. City of Sabetha	235
4. City of Minneapolis	211
5. City of Sterling	237
6. City of Holton	226
7. City of Larned	240
8. City of Ellinwood	242
9. City of Stafford	243
10. City of Osage City	194
11. City of St. John	202
12. City of Herrington	209

KPL states that the purpose of the filing is to reflect the impact of the Tax Reform Act of 1986 on the rates filed using the method set out by the Commission in Order No. 475. The proposed effective date of the rate schedule change is July 1, 1987.

An abbreviated copy of the filing was served upon the affected customers, the Kansas Electric Power Cooperative and the State Corporation Commission of the States of Kansas.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Nantahala Power and Light Company

[Docket No. ER88-18-000]

Take notice that on October 6, 1987, Nantahala Power and Light Company tendered for filing revised schedule "PL" (COSAC) to reflect appropriately the change in rates resulting from the reduction of the federal income tax rate from 46% to 40%. Nantahala states that its customers are entitled to a refund for the rates paid between April and September 30, 1987. The amount of the refund is calculated on the revised COSAC, and Nantahala also states that it intends to credit the customers' October bills by the amount of the refund.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER88-21-000]

Take notice that on October 9, 1987, New England Power Company (NEP) tendered for filing an executed Agreement for Transmission of Firm Power (Agreement) between NEP and the Green Mountain Power Corporation (GMP). NEP states that the purpose of the Agreement is to provide GMP with transmission services to deliver firm power to Bozrah) Light and Power Company (Bozrah located in Gilman, Connecticut.

NEP requests waiver of the Commission's notice requirements so that the Agreement may become effective March 5, 1987, when power became available for transfer to Bozrah. As good cause for this request, NEP states that negotiations were not begun and completed in sufficient time prior to that date to file the Agreement with the Commission 60 days in advance of the proposed effective date. NEP further states that the press of other matters has delayed NEP's subsequent submission of the Agreement.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this document.

8. Niagara Mohawk Power Corporation

[Docket No. ER86-354-002]

Take notice that on October 13, 1987, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing pursuant to Commission Order dated September 28, 1987 its supplemental refund report. Niagara Mohawk states that the supplemental refund (principal and interest) of $30,322.27 was tendered to the Power Authority of the State of New York on October 9, 1987.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company

[Docket No. EC87-23-000]

Take notice that on October 14, 1987, Northern States Power Company (NSP) tendered for filing an Application for Sale, Lease or Other Disposition, Merger or Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility. The Application provides for the sale of substation facilities located in Chaska, Minnesota, to the City of Chaska.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER88-20-000]

Take notice that on October 9, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing a Capacity Account Repurchase Rate Settlement Agreement between PGandE and the Western Area Power Administration (Western) (Agreement), dated August 24, 1987.

The Agreement provides for the settlement of a billing dispute regarding the rates charged to Western for capacity purchased from its Capacity Account with PGandE; in addition, the Agreement provides for negotiated rates over the four-year term of the Agreement. The Agreement also provides a mechanism for the reconciliation of revenue collected at the negotiated rates consistent with the manner in which the California Public Utilities Commission permits recovery of costs of Diablo Canyon Nuclear Power Plant in retail rates.

Copies of this filing were served upon Western and the California Public Utilities Commission.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER88-27-000]

Take notice that on October 14, 1987, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with § 35.12 of the Commission's Regulation's, a Power Exchange Agreement dated June 10, 1987, between Pacific and the Sacramento Municipal Utility District (SMUD).

Pacific requests waiver of the Commission's Notice requirements to permit posting and filing of this rate schedule earlier than 120 days prior to the commencement of electric service which is January 1, 1990.

Copies of this filing were supplied to the Public Utility Commission of the State of California, the Public Utility Commission of the State of Oregon, and SMUD.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER88-23-000]

Take notice that on October 13, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to Bio-Energy Partners (Bio-Energy). The Rate Schedule provides for a monthly transmission service charge of $2.90 per kilowatt plus $.00076 per kilowatthour for the delivery of the net electric power output of Bio-Energy's qualifying landfill gas-fired facility to be located in the Township of Eastampton, Burlington County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon the customer and the New Jersey Board of Public Utilities.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Electric Power Company

[Docket No. ER87-542-000]

Take notice that on October 13, 1987, Southwestern Electric Power Company (SWEPCO) tendered for filing, at the request of the Commission Staff, additional information with respect to proposed rates for transmission service to Arkansas Electric Cooperative Corporation (AECC).

Copies of the filing were served upon AECC and the Arkansas Public Service Commission.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER88-26-000]

Take notice that on October 13, 1987, Union Electric Company tendered for filing a Wholesale Electric Service Agreement, Transmission Service Agreement, and Transmission Service Transaction 1, each dated September 24, 1987, with the City of Marceline, Mo., providing for the sale of electric service and the transmittal of power and energy from other sources.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

15. Upper Peninsula Power Company

[Docket No. ER88-22-000]

Take notice that on October 9, 1987, Upper Peninsula Power Company (UPPCO) tendered for filing proposed changes in the rate schedules for service to the Alger-Delta Cooperative Electric Association, the Ontonagon County Rural Electrification Association, Village of Baraga, City of Escanaba, City of Gladstone, Village of L'Anse, City of Negaunee, and the Wisconsin Electric Power Company.

Based on the Period II test year ending December 31, 1983, when its rates for wholesale electric service were last changed, UPPCO states that the proposed rates would decrease revenues from sales to these customers by $100,678 (1.89%). UPPCO states that the rate decrease is necessary to comply with FERC Order No. 475 issued June 26, 1987, reflecting the decrease in the Federal Corporate income tax pursuant to the Tax Reform Act of 1986.

UPPCO proposes to make its rate change effective July 1, 1987. Copies of the filing were served upon UPPCO's affected jurisdictional customers, and the Michigan Public Service Commission.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

16. Washington Water Power Company

[Docket No. ER88-25-000]

Take notice that on October 13, 1987, Washington Water Power Company (Washington) tendered for filing copies of an Amendment to an exchange agreement with Puget Sound Power & Light Company (Puget) which provides for the exchange of steam-electric generation which, because of plant locations and load area locations, results in substantial savings in both transmission service cost and in transfer losses.

Washington is a 15% owner of the Centralia Steam-Electric Plant in western Washington near Puget's system load area. Puget is a 50% owner of Colstrip Units #1 and #2 and a 25% owner of Colstrip Units #3 and #4 in eastern Montana. The subject agreement provides for the exchange of Washington's Centralia capacity and energy for like amounts of Puget's Colstrip capacity and energy, which, because of the shortening of the transfer distances involved results in substantial savings in both transmission service costs and transfer losses. The savings resulting therefrom both in transmission costs and the transfer losses are shared equally by Washington and Puget under the terms of this agreement.

Comment date: November 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24619 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Application Filed With the Commission

October 20, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Major License (5 MW).

b. Project No.: 10332-000.

c. Date Filed: February 24, 1987.

d. Applicant: WV Hydro, Inc.

e. Name of Project: New Cumberland.

f. Location: On the Ohio River near New Cumberland, Hancock County, West Virginia and Jefferson County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: James B. Price, WV Hydro, Inc., 120 Calumet Ct., Aiken, SC 29801, (803) 642-2749.

i. FERC Contact: Michael Dees, (202) 376–9830.

j. Comment Date: December 3, 1987.

k. Competing Application: Project No. 6901–001, Date Filed: May 29, 1985.

l. Description of Project: The proposed project would utilize the existing Corps of Engineer's New Cumberland Dam and reservoir and would consist of: (1) A proposed prefabricated powerhouse 274 feet long, 70 feet wide and 104 feet high housing three hydropower units with a total capacity of approximately 55–MW; (2) a proposed tailrace 210 feet wide and 63 feet deep; (3) a proposed 138-kV transmission line 1,000 feet long; and (4) appurtenant facilities. The applicant estimates that the average annual energy generation would be 232 GWh, and proposes to sell the energy to Monongahela Power Company.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24620 Filed 10–22–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-17381-004, et al.]

Kerr-McGee Corp., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

October 20, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protect with reference to said applications should on or before November 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-17381-004, D, Oct. 5, 1987	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125	Transcontinental Gas Pipe Line Corp., OCS 0346 #24 Well, Ship Shoal Block 28, Federal Offshore Louisiana	(1)	.....
G-17381-003, D, Oct. 5, 1987.	.....do	OCS 0343 #1 Well, Ship Shoal Block 34, Federal Offshore Louisiana	(1)	.....
G-17381-005, D, Oct. 5, 1987.	.....do	OCS 0336 #3 Well, Ship Shoal Block 33, Federal Offshore Louisiana	(1)	.....
CI88-14-000 (CI67-459), B, Oct. 5, 1987.	Union Texas Petroleum Corporation, P.O. Box 2120, Houston, Texas 77252-2120	Oxy Cities Service NGL Inc., South Bishop Field, Ellis County, Oklahoma	(2)	.....
CI88-15-000, (G-8123), B, Oct. 5, 1987.	.....do	El Paso Natural Gas Company, South Fullerton Gasoline Plant, Andrews County, Texas	(3)	.....
CI60-466-003, D, Oct. 5, 1987.	Cabot Petroleum Corporation, P.O. Box 4544, Houston, Texas 77210-4544	Northern Natural Gas Company, Division of Enron Corp., Laverne Field, Beaver County, Oklahoma	(4)	.....
CI61-1271-000, C, Oct. 9, 1987.	Phillips 66 Natural Gas Company, 990-G Plaza Office Bldg., Bartesville, Okla. 74004	Williston Basin Interstate Pipeline Company, SE/SW Sec. 3-151N-96W, McKenzie County, North Dakota	(5)	.....

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI88-16-000, F, Oct. 9, 1987.	Pelto Oil Company (Succ. in Interest to Tenneco Oil Company, *et al.*), One Allen Center—Suite 1800, 500 Dallas Street, Houston, Texas 77002	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., South Marsh Island Block 252, Offshore Louisiana	(5)	.....
CI87-933-000, B, Sep. 28, 1987.	Viersen & Cochran c/o Hugh Robinson, P.O. Box 280, Okmulgee, Okla. 74447	ANR Pipeline Company, Epps #1 and #2 Wells, Harper County, Oklahoma	(7)	.....
CI87-903-000, B, Sep. 14, 1987.	Aladdin Petroleum Company c/o A.J. Warner, Jr., 809 Petroleum Bldg., 221 S. Broadway, Wichita, Kansas 67202	Dunaway No. 1 Well, Sec. 28-T27N-R25W, Harper County, Oklahoma	(8)	.....
CI88-7-000, B, Oct. 5, 1987.	Goldston Oil Corporation, P.O. Box 570365, Houston, Texas 77257-0365	El Paso Natural Gas Company, State "B" Com No. 1 Sec. 36-T24S-R36E, Custer Field, Lea County, New Mexico	(9)	.....
CI88-19-000, B, Oct. 8, 1987.	Carroll Resources, Inc., P.O. Box 129, Gassaway, W. Va. 26624	Consolidated Gas Transmission Corporation, Salt Lick District, Braxton West Virginia	(10)	.....

[1] Well has been plugged and abandoned and is awaiting removal of casing and structure.

[2] Well plugged and abandoned in January 1985. The lease dedicated to the contract expired in February 1985. Union Texas Petroleum Corporation no longer has an interest in the lease and well.

[3] Effective 10-1-86, Seller conveyed its interest in the South Fullerton Plant to Shell Western E&P Inc.

[4] All gas reserves from the Leon Allen #7 have been depleted to the extent that the continuance of gas service is unwarranted. This well was plugged and abandoned on 6-10-87.

[5] Applicant is filing for addition of acreage under Gas Sales Contract dated 12-4-80, amended by Letter Agreement dated 8-13-87.

[6] Effective 12-1-86, Applicant acquired a 25% working interest in South Marsh Island Block 252, Offshore Louisiana, OCS-G-2598 from Brooklyn-Union Exploration Company, Inc., as evidenced by Assignment executed 3-26-87. Brooklyn-Union acquired its interest in the same acreage pursuant to Farmout Agreement with Tenneco dated 9-9-86, as evidenced by Assignment dated 3-26-87.

[7] Applicant requests limited-term abandonment with pregranted abandonment through September 21, 1989. The purchaser cannot purchase the gas due to market constraints. Deliverability is 250 Mcf/d. The gas is NGPA section 104 minimum rate gas. Applicant intends to sell the released volumes to new purchasers.

[8] Applicant requests two-year limited-term abandonment with pregranted abandonment. The purchaser cannot purchase the gas due to market constraints. Deliverability is 1,200 Mcf/d. The gas is NGPA section 104 gas. Applicant intends to sell the released volumes to new purchasers.

[9] Applicant request permanent abandonment of sale to El Paso. The purchaser does not intend to take gas from the well in the future. The shut-in periods earlier in the year and any future shut-in will be without benefit of payments. Applicant requests pregranted abandonment for a period of three-years. Deliverability is approximately 7.5 Mcf/d. The well produces NGPA section 106(a) gas. Applicant proposes to sell gas in the spot market.

[10] No longer has a contract with Consolidated Gas Transmission Corporation. Now has a contract with Equitable Gas.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-24622 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. CP88-10-000 et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-10-000]

October 19, 1987.

Take notice that on October 7, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P. P. Box 2511, Houston, Texas 77001, filed in Docket No. CP88-10-000 a request, pursuant to § 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Masonite Corporation (Masonite), an end-user, under Applicant's blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated August 25, 1987, it proposes to transport natural gas for Masonite from a point of receipt (Big Sandy) located in Crawford County, Pennsylvania, to a delivery point at Towanda, Bradford County, Pennsylvania, an interconnection between Tennessee and Pennsylvania and Southern Gas Company, the downstream transporter.

The applicant further states that the maximum daily and annual quantities would be 4,300 dekatherms and 1,569,500 dekatherms, respectively. It is asserted that service under § 284.223(a) commenced September 1, 1987, as reported in Docket No. ST88-09.

Comment date: December 3, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company, Northwest Pipeline Corporation

[Docket No. CP85-538-003 and Docket No. CP85-349-002]

October 20, 1987.

Take notice that on October 1, 1987, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 and Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0900, jointly filed in Docket Nos. CP85-538-003 and CP85-349-002 a petition to amend further the order issued August 30, 1985, in Docket No. CP85-538-000, *et al.*, pursuant to section 7(c) of the Natural Gas Act so as to authorize changes in the level of firm service applicable to the transportation service provided to ANR by Northwest, a revised facility configuration, and the interruptible transportation service of natural gas by ANR on behalf of Northwest, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued August 30, 1985, in Docket Nos. CP85-538-000 and CP85-349-000 ANR and Northwest state they were authorized to construct and operate an 18 mile, 20-inch pipeline (the residue line) extending from Northwest's Opal processing plant to Exxon Company U.S.A.'s (Exxon) Shute Creek processing plant, all in Lincoln County, Wyoming. The order also states that Northwest would operate the residue line on behalf of itself and ANR, and would also be sole transporter for the residue line; however, it is indicated that ANR would maintain 100 percent capacity in the residue line. It is stated that Northwest was also authorized in said order to transport up to 115,000 MMBtu per day of natural gas which ANR purchases at the tailgate of Exxon's plant. It is further stated that Northwest would transport the gas through the jointly owned residue line for ANR's account and redeliver on a firm basis up to a total of 75,000 MMBtu per day to El Paso Natural Gas Company (El Paso) at Ignacio, Colorado (Ignacio delivery point) and up to 40,000 MMBtu per day to Colorado Interstate Gas Company (CIG) at Green River, Wyoming (Green River delivery point), pursuant to the terms of a January 23, 1985, gas transportation and exchange agreement (T&E Agreement). It is stated that the term of the T&E Agreement is for a primary term of 15 years from the date of initial delivery and from year-to-year thereafter unless cancelled by written notice.

Pursuant to the terms of amendments to the T&E Agreement dated July 10,

1986 and November 26, 1986, ANR and Northwest now propose to change the level of transportation service, firm and interruptible, which Northwest provides ANR. It is stated that Northwest would continue to transport for the account of ANR on a firm basis up to 75,000 MMBtu per day of natural gas for redelivery to the Ignacio delivery point and, in addition, transport up to 40,000 MMBtu per day for redelivery to the Ignacio delivery point on an interruptible basis. It is also stated that Northwest would transport up to 115,000 MMBtu per day to the Green River delivery point on an interruptible basis; however, the total authorization requested herein would not exceed 115,000 MMBtu per day including the firm and interruptible transportation service, it is asserted. It is stated that the proposed service would be for an amended term of three years and from year-to-year thereafter until cancelled upon 12 months prior written notice.

In addition, ANR now requests authorization to also be a transporter in the residue line. It is stated that pursuant to the terms of a June 27, 1986, gas transportation agreement, ANR proposes to transport up to 86,000 MMBtu per day of natural gas for the account of Northwest on an interruptible basis utilizing the residue line. It is explained that ANR would receive the gas from Northwest either at Northwest's Opal processing plant and redeliver thermally equivalent volumes at Exxon's Shute Creek plant or receive volumes of gas at the Shute Creek plant and redeliver thermally equivalent volumes at the Opal processing plant. It is stated that all redeliveries would be from the residue line. It is also stated that the direction of flow would be governed by the operation of Exxon's plant. It is explained that if the residue line gas is being delivered from the plant, ANR's redelivery point would be the Opal processing plant; however, if Exxon is not running the plant or requests emergency gas, it is stated that ANR's redelivery point would be the Shute Creek plant. The transportation agreement is also for a term of three years from year-to-year thereafter unless cancelled upon 12 months prior written notice, it is indicated.

It is maintained that for all volumes transported on a firm basis for ANR, Northwest would charge its firm off-system transportation rate consisting of a demand charge and a commodity charge. It is stated that such rates are $3.7536 per month per MMBtu of firm contract demand plus a commodity charge of 1.28 cents per MMBtu per billing mileage unit with fuel reimbursement of .50 percent of the volumes tendered for transportation. It is maintained that for all volumes transported on an interruptible basis for ANR, Northwest would charge its interruptible off-system transportation service rate, currently 5.46 cents per MMBtu per billing mileage unit with a fuel reimbursement of .50 percent of the volumes tendered for transportation. It is also maintained that such rates for firm and interruptible service are set forth on Sheet 2 of Northwest's presently effective FERC Gas Tariff, Original Volume No. 2.

It is asserted that ANR would charge Northwest an initial rate of 7.3 cents per MMBtu for all volumes transported on behalf of Northwest.

ANR and Northwest also requests authorization to conform the certificate issued August 30, 1985, in Docket No. CP85-538-003, *et al.*, to the facilities actually constructed and placed in operation. It is stated that the original certificate authorized a meter station to be installed at the outlet of Exxon's Shute Creek plant. It is stated that the meter station was actually installed at the terminus of the residue line near Northwest's Opal processing plant.

Comment date: November 10, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Sea Robin Pipeline Company

[Docket No. CP88-15-000]

October 20, 1987.

Take notice that on October 8, 1987, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251-1478 pursuant to section 7(b) of the Natural Gas Act, as amended, filed in Docket No. CP88-15-000 an application for an Order authorizing abandonment of its existing 60 H.P. Compressor Unit, which is located on Platform 229-A, East Cameron Area, Offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states that because of a diminished gas supply the compression facility proposed to be abandoned herein is no longer used or useful in the operation of Sea Robin's system, and the subject compressor has not been in service since October 1986.

Sea Robin estimates that the cost of removing the subject compressor unit would be $170,400. Sea Robin further estimates that the subject compressor unit would have a salvage value of $10,000.

Comment date: November 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP88-3-000]

October 20, 1987.

Take notice that on October 1, 1987, Texas Gas Transmission Corporation (Texas Gas), a Delaware corporation, whose mailing address is P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-3-000 an application pursuant to section 7(b) of the Natural Gas Act seeking authorization to abandon by removal two (2) Clark RAS-8 compressors and related facilities located at Texas Gas' Guthrie, Louisiana, Compressor Station. Texas Gas states that these compressors were designed to compress gas produced from the Monroe Field, Louisiana and these facilities were originally installed to facilitate the movement of natural gas purchased from reserves located in the Monroe Field. Texas Gas states that the volume of production in the field has fallen significantly in recent years, and is currently such that the compressors are no longer effective enough to elevate the pressure of the gas to a point where it can be injected into Texas Gas's pipeline system, all as more fully set forth in the application on file with the Commission and open for public inspection.

Texas Gas states that the two (2) Clark compressor engines, Engine Nos. 7 and 8, were acquired by Texas Gas as a result of the merger of Memphis Natural Gas Company and Kentucky Natural Gas Corporation into Texas Gas, which was approved by the Commission on February 12, 1948, in an order issued in Docket No. G-855. The Clark Engine No. 7 was originally placed into service in December 1940 and the Clark Engine No. 8 was originally placed into service in December 1943.

Texas Gas states that the two (2) compressor engines, each with a horsepower of 1,000 H.P., are no longer necessary for the operation of its system because of the increased efficiency provided by a new engine installed in 1985, designated as Engine No. 12. Engine No. 12 is a Waukesha 12-cylinder engine rated at 896 horsepower which was installed as a direct replacement for Engine No. 1, a 1,400 horsepower Worthington engine installed in February 1929. Texas Gas further states that Engine No. 12 is more than adequate to replace the traditional workload performed by Engines Nos. 7 and 8, which because of their age, require excessive and uneconomic maintenance.

Comment date: November 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Williston Basin Interstate Pipeline Co.

[Docket No. CP88-1-000]

October 20, 1987.

Take notice that on October 1, 1987, Williston Basin Interstate Pipeline Company (Applicant), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP88-1-000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of the authority to sell gas to Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., and Wyoming Gas Company (Wyoming Gas) pursuant to Applicant's Rate Schedule I-1, and to terminate Rate Schedule I-1 as found in its FERC Gas Tariff, First Revised Volume No. 1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its only customer currently receiving service under Rate Schedule I-1, Montana-Dakota, will serve its entire requirements pursuant to the terms of Applicant's Rate Schedule G-1. Applicant states further that a service agreement executed in 1966 also exists under Rate Schedule I-1 with Wyoming Gas, but has been inactive since May 1986 because Wyoming Gas no longer serves any end-use consumers eligible for service under Rate Schedule I-1. Applicant asserts its belief that the requested abandonment is in the best interest of its customers as it allows for more efficient utilization of contract demand by allowing its customers to serve all end-use customer load pursuant to the terms of Applicant's existing Rate Schedule G-1.

Applicant requests that the grant of abandonment be concurrently effective with the implementation of rates in Docket No. RP87-115-000, i.e., March 1, 1988. To this end, Applicant requests issuance of an order by February 15, 1988 to permit pertinent tariff sheets to be moved into effect March 1, 1988.

Comment date: November 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to be proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24621 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-9-000]

Amerada Hess Corp.; Application

October 19, 1987.

Take notice that on October 6, 1987, Amerada Hess Corporation (Amerada Hess), of P.O. Box 2040, Tulsa, Oklahoma 74102, filed an application pursuant to section 7(b) and (c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b) and (c), and Part 157 of the Federal Energy Regulatory Commission's regulations thereunder (18 CFR Part 157), for blanket authorization, for a three-year term, (i) to abandon sales for resale of NGA gas to the extent that such gas is released by Amerada Hess' interstate pipeline purchasers for resale to third parties; (ii) to make sales for resale in interstate commerce of such abandoned gas, and (iii) to abandon (pregranted abandonment) any sale for resale authorized pursuant to any blanket certificate issued herein. Amerada Hess states that it will recognize take-or-pay credit for any released volumes sold under the requested blanket certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24623 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-46-000]

Arkansas Power & Light Co.; Order Granting Petition for Declaratory Order

Issued: October 19, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and C.M. Naeve.

On June 22, 1987, Arkansas Power & Light Company (AP&L) filed a petition seeking a declaratory order permitting AP&L to continue to record as assets on its books and records, in accordance with the Commission's Uniform System of Accounts, certain deferrals which are being accrued pursuant to a settlement agreement approved by the Arkansas Public Service Commission (APSC).

Background

On June 13, 1985, the Commission issued Opinion No. 234,[1] allocating to AP&L the responsibility for 36% of the capacity and accompanying energy costs associated with the Grand Gulf Unit 1 nuclear generating plant (Grand Gulf).

In November 1984, AP&L filed a retail rate case with the Arkansas Public Service Commission (APSC) which included the proposed recovery of that portion of the Grand Gulf costs allocated in the initial decision in Docket No. ER82-616-000 to AP&L.[2] On September 5, 1985, a settlement agreement was executed by all parties to that case, and approved by the APSC on September 9, 1985.

The settlement agreement provides for the recovery from AP&L's Arkansas retail customers of the retail portion of the costs associated with Grand Gulf allocated to AP&L in Order No. 234. The agreement provides that from September 9, 1985 to August 31, 1995, AP&L will defer a portion of the costs associated with its allocated share of the power from Grand Gulf. The amount to be deferred each year declines from 14.88% of such cost in year one to 4.08% in year ten.

AP&L is permitted to recover, on a current basis, the incremental cost of capital, including an equity return, associated with the deferral. Beginning September 1, 1995, AP&L will be allowed to include the balance of the deferred costs in its rate base, and amortize the balance over the remaining depreciable life of Grand Gulf, for determining its Arkansas retail revenue requirement.

Pursuant to a 1976 settlement agreement approved by the Federal Power Commission, rates charged by AP&L to certain of its wholesale customers must reflect the wholesale portion of AP&L's costs as determined in the cost of service study underlying the rates charged to Arkansas retail customers.[3] By letter order issued August 6, 1985,[4] the Commission accepted for filing wholesale rates developed pursuant to the 1976 settlement agreement, including riders designed to recover costs associated with Grand Gulf on a phase-in basis. The same letter order accepted AP&L's accounting to record the effect of the phase-in, including AP&L's treatment of the deferred amounts as a separate asset.

FASB No. 92

In August 1987, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 92, "Regulated Enterprises—Accounting for Phase-In Plans" (FASB No. 92), which sets forth certain criteria which must be met in order for a regulated enterprise to capitalize as an asset all costs incurred in connection with a new plant, recovery of which has been deferred by a regulatory body. For plants completed before January 1, 1988, and plants on which substantial physical construction has been performed before such date, FASB No. 92 requires that all such deferred costs be recovered within ten years of the date the deferrals begin. If all of the criteria are not met, the company may not capitalize any of the deferred costs allowed under the phase-in plan in its financial statements issued to the public, but must reflect the deferred costs as a loss in the current year. For plants on which no substantial construction has been performed before January 1, 1988, recovery of costs under phase-in plans cannot be reflected by the utility for financial reporting purposes regardless of the length of the phase-in.

In addition, the percentage increase in rates scheduled under the phase-in plan for each future year can be no greater than the percentage increase in rates scheduled under the plan for each immediately preceding year. Thus, plans which provide for 'back loading' will not meet the criteria of FASB No. 92.

AP&L's Petition

On June 22, 1987 AP&L filed a petition seeking a declaratory order [5] permitting AP&L to continue to record as assets on its books and records, in accordance with the Commission's Uniform System of Accounts, the deferrals which are being accrued pursuant to the phase-in plan, notwithstanding the phase-in plan's failure to meet the criteria set forth in FASB No. 92.[6]

AP&L argues that because recovery by the company of the deferred amounts is probable, it should be permitted to continue to record such amounts as assets. In this regard, AP&L has submitted with its petition an opinion of legal counsel that recovery of the deferred amounts is probable under pertinent Arkansas law, which opinion concludes that: (1) The retail portion of the entire amount of Grand Gulf costs allocated to AP&L the Commission would be currently recoverable by AP&L from its retail customers under the doctrine of federal preemption but have been deferred by the Arkansas settlement agreement; (2) the deferred amounts are entitled to be treated identifically to any other rates and charges which were in effect and approved by the AP&L and, therefore, cannot be unilaterally altered by the APSE due to the judicial precedent and Arkansas statutes which establish the rule against retroactive ratemaking; (3) the doctrine of equitable estoppel, depending upon future factural situations, provides a defense to any proposal to deny recovery of the deferred costs; and (4) Arkansas statutes provide that, while the APSC may amend or rescind previous decisions, such amendment or rescission shall not affect the validity or legality of acts taken the AP&L in pursuance of the previous order prior to the notice of the change.

AP&L also submitted the opinion of independent public accountants which states that: (1) Continued deferral of such costs would be appropriate; (2) treatment of such costs as period costs (that is, as charges to operations) would result in financial statements which

[1] Middle South Energy, Inc., Opinion No. 234, 31 FERC ¶ 61,305 (1985).

[2] Middle South Energy, Inc. 26 FERC ¶ 63,044 (1984).

[3] Arkansas Power & Light Co., 56 FPC 3127 (1976).

[4] Arkansas Power & Light Co., 32 FERC ¶ 61,215 (1985).

[5] Notice of AP&L's filing was published in the Federal Register, with comments, protests, or motions to intervene due on or before July 13, 1987. 52 FR 25058 (1987).

[6] The phase-in plan does not meet the criteria set forth in FASB No. 92 in that the deferred amounts will not be fully recovered within ten years of the date deferrals began, and percentage increases in future years will exceed percentage increases over rates for immediately preceding future years.

would be misleading since such costs represent assets because future recovery is probable; and (3) such deferred costs are indicative of a probable future economic benefit which the company has obtained, and that, in the absence of regulatory or other circumstances which cause the likelihood of future recovery to be less than probable, deferrals of such costs should be continued.[7]

On July 13, 1987, the APSC submitted comments supporting AP&L's petition. The APSC believes that, with regard to the phase-in plan, adherence to FASB No. 92 would be inconsistent with generally accepted accounting principles in that an arbitrary time limit for recovery of costs deferred pursuant to a phase-in plan is less determinative and persuasive in judging the ultimate collectability of such deferrals than the unique provisions of the Arkansas settlement agreement. The APSC concurs with opinion of AP&L's independent public accountants that future recovery of the deferrerd amounts is probable and thus the deferred amounts should be represented as assets.

The APSC states that its acceptance of the settlement agreement implicitly recognizes and adopts the accounting treament of the deferrals set forth in the agreement. Further, the APSC believes that prohibiting the recording of the deferrals will result in misleading financial statements of AP&L, and that the recording of such costs as current expenses will create unjustified book losses and unduly weaken AP&L's financial position by misrepresenting the economic realities resulting from the settlement agreement.

Finally, the APSC asserts that any prohibition of the recording of deferred costs associated with the settlement agreement could unnecessarily and unjustifiably encroach on the authority of the APSC in establishing retail rates to be charged by AP&L. Specifically, the APSC asserts that any such prohibition could render the settlement agreement moot, thereby resulting in the preemption of regulatory authority by an inappropriate body (FASB). The APSC consider this possible occurrence as a threat to its ability to regulate AP&L on a retail rate basis.

Discussion

Under section 301 of the Federal Power Act (FPA), 16 U.S.C. 825 (1982), the Commission has the authority to prescribe the manner in which accounts and records are to be maintained by jurisdictional utilities. The Commission's authority to prescribe a uniform system of accounting and to require jurisdictional utilities to keep accounts accordingly is well settled. *Northwestern Electric Co., v. FPC*, 321 U.S. 119, 122–3 (1943).

The Senate report accompanying the legislation which became Parts II and III of the Federal Power Act states: "Section 301 of the Power Act requires every licensee and every public utility subject to the act to keep its accounts in the manner prescribed by the Commission: it thus takes a long step in the direction of the uniform accounting which is so essential in the industry. The authority of the Commission over the accounts of companies under its jurisdiction extends to the entire business of such companies * * *."[8]

It is essential that the Commission have available to it for ratemaking purposes a set of financial statements that will enable it to determine the current cost of providing service under its adopted scheme of regulations and to be able to properly monitor past performance under approved rates by inspection of financial statements that comport with the ratemaking principles used to develop them. This can only be accomplished if financial statements prepared for ratemaking purposes are prepared in a manner that reflects the economic effects of regulation. The phase-in plan set forth in the settlement agreement and approved by the APSC (and adopted by this Commission) is simply a way to allocate over time the cost of providing service in a manner that the Commission has found to produce rates that will not be unjust and unreasonable so as to result in excess revenues. The phase-in plan, although achieving different expense recognition in particular periods than would the application of generally accepted accounting principles [9] to a non-regulated enterprise, is not intended to disallow costs from rate recognition, but simply to provide for recovery in a later period. It is probable that costs deferred through the phase-in plan for jurisdictional customers will be collectible through future rates and apparently even stronger assurances exist from the APSC as to the future collections of the deferral related to retail rates. These deferrals are, therefore, regulatory created assets that properly require recognition on the balance sheet.

While a limitation on the Commission's authority is found in section 318 of the FPA, we do not find section 318 to be applicable to this proceeding.[10] Section 318 resolves conflicts between the rules and regulations under the Public Utility Holding Company Act (PUHCA)[11] and the rules and regulations under the FPA with respect to the same subject matter, in favor of the requirements under PUHCA. The FASB, as the body designated by the Securities and Exchange Commission (SEC) to establish accounting principles,[12] has promulgated a rule which is not consistent with the objectives of the Commission's Uniform System of Accounts.

Section 318, however, applies only to actual conflicts under the two Acts.[13] In

[7] On August 24, 1987, AP&L filed an amendment to its petition, addressing certain provisions contained in FASB No. 92 which did not appear in the exposure draft circulating at the time the original petition was filed. AP&L noted that (1) the prohibition against "back loading" did not appear in the exposure draft, and (2) the final statement modified the definition of "phase-in plan" from that which appeared in the exposure draft. AP&L asserts that these changes do not affect or alter the basis or rationale for the requested declaratory order. With its amendment, AP&L submitted the statement of its independent, public accountants reaffirming their original opinion, notwithstanding the changes contained in the final FAS statement.

[8] S. Report No. 621, 74th Cong., 1st Secs. p. 53 (1935).

[9] Generally accepted accounting principles (GAAP) is a technical term in financial accounting. GAAP encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. GAAP incorporates the accounting profession's consensus at a particular time as to which economic resources and obligations should be recorded as assets and liabilities by financial accounting, which changes in assets and liabilities should be recorded, when these changes should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and what financial statements should be prepared.

As discussed below, the Securities and Exchange Commission has designated the FASB as the body to establish accounting principles. The American Institute of Certified Public Accountants has also designated the FASB to perform this function.

[10] Section 318 states: "If, with respect to the issue sale, or graranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or or any other subject matter, any person is subject to both a requirement of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or order thereunder and to a requirement of this Act or of a rule, regulation, or order thereunder, the requirement of the Public Utility Holding Company Act of 1935 shall apply to such person, and such person shall not be subject to the requirement of this Act, or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such requirement of the Public Utility Holding Act of 1935, in which case the requirements of this Act shall apply to such person." 16 U.S.C. 825q (1982).

[11] 16 U.S.C. 79–79z–6 (1982).

[12] SEC Release No. 150, December 20, 1973.

[13] *Appalachian Power Company* v. *FPC*, 328 F.2d 237, 250 (4th Cir. 1964), *cert. denied*, 397 U.S. 829 (1964).

the instant case, the Commission's use of the Uniform Systems of Accounts for ratemaking purposes relates to a different subject matter than the disclosure requirements promulgated by the SEC under PUHCA. As stated above, it is essential that the Commission have available to it for ratemaking purposes a set of financial statements that comport with the ratemaking principles used to develop and monitor rates. This requirement is independent of, and not in conflict with, the disclosure requirements under PUHCA, promulgated for the protection of investors. This distinction is implicit in FASB No. 92 itself, which disallows capitalization of the deferred amounts "for general-purpose financial reporting purposes" as distinguished from the treatment of the deferrals under the plan for "rate-making purposes." [14]

Since no actual conflict would exist, we find that section 318 of the FPA does not bar the Commission from authorizing or requiring jurisdictional utilities to maintain their books of account in accordance with the Commission's Uniform System of Accounts for ratemaking purposes, notwithstanding that such method of accounting does not comport with FASB No. 92.

Accordingly, AP&L's petition for a declaratory order will be granted.

Finally, we note that the issues raised in this proceeding have the potential to affect almost all electric utilities subject to our jurisdiction. Therefore, given the scope of these issues, the Commission intends to explore this matter and may explore other matters presented by FASB No. 92 generically in the near future. The Secretary will also be directed to have this order published in the **Federal Register.**

The Commission Orders

(A) AP&L's petition for a declaratory order permitting AP&L to continue to record as assets on its books and records, in accordance with the Uniform System of Accounts, certain deferrals which are being accrued pursuant to a settlement agreement approved by the APSC and accepted by the Commission in Docket No. ER85-563-000 is hereby granted.

(B) The Secretary is hereby directed to have this order published in the **Federal Register.**

(C) Docket No. EL87-46-000 is hereby terminated.

[14] FASB No. 92, paragraphs (4) and (5) at p. 2

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24624 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-119-001]

Florida Gas Transmission Co.; Compliance Filing

October 20, 1987.

Take notice that on October 12, 1987, Florida Gas Transmission Company (FGT) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets:

First Revised Sheet No. 57B of First Revised Volume No. 1
First Revised Sheet No. 777 of Original Volume No. 3
First Revised Sheet No. 811 of Original Volume No. 3

FGT states that 1st Revised Sheet No. 57B of First Revised Volume No. 1 reflects revisions pursuant to Order 472-B in compliance with the conditions set forth in the Commission's September 29, 1987 order of FGT's Docket No. TA88-1-34-000. FGT states that in that order the Commission accepted for filing effective October 1, 1987, the Annual Charge Adjustment (ACA) clause established in Section 22 of the General Terms and conditions of FGT's FERC Gas Tariff, subject to FGT filing appropriately revised tariff sheets in accordance with Order No. 472-B.

FGT states that it is also filing 1st Revised Sheet No. 777 of Original Volume No. 3 and 1st Revised Sheet No. 811 of Original Volume No. 3. Original Sheet No. 777 and Original Sheet No. 811 were approved by the Commission orders dated September 17, 1987 in Docket No. CP87-386-000 and Docket No. CP87-406-000, respectively. These revised tariff sheets submitted as part of this filing contain revisions necessary to implement the ACA clause and to comply with Order No. 472 and Order No. 472-B.

FGT states that copies of the filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before October 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will to serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24625 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2313-000]

Thomas J. May; Filing

October 19, 1987.

Take notice that on October 5, 1987, Thomas J. May filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions.

Senior Vice President & Treasurer—Boston Edison Company
Director—Connecticut Yankee Atomic Power Company
Director—Yankee Atomic Electric Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24626 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC88-2-000]

North Penn Gas Co.; Tariff Filing

October 20, 1987.

Take notice that of October 15, 1987, North Penn Gas Company (Applicant), 76-88 Mill Street, Port Allegany, Pennsylvania 16743, filed in Docket No. TC88-2-000, Fifth Revised Tariff Sheet No. 12k and Fifth Revised Tariff Sheet No. 12L to its FERC Gas Tariff, First Revised Volume No. 1, pursuant to § 281.204(b) of the Commission's

Regulations which requires interstate pipelines to update their indices of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before November 3, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commision's Rules of Practice and Procedures (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24627 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-12-000]

Superior Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 20, 1987.

Take notice that on October 9, 1987, Superior Offshore Pipeline Company (SOPCO) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

FERC Gas Tariff, Original Volume No. 1

First Revised Sheet No. 1
First Revised Sheet No. 2
Second Revised Sheet No. 5
Second Revised Sheet No. 8
First Revised Sheet No. 19
Second Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 41
Second Revised Sheet No. 48
Second Revised Sheet No. 54

In its filing, SOPCO makes the following representations: The revised tariff sheets are being filed to incorporate into SOPCO's Tariff a FERC Annual Charge Adjustment (ACA) Unit Charge, as authorized by § 154.38(d) of the Commission's Regulations, which was added pursuant to Order No. 472 issued May 29, 1987, at (39 FERC, Para. 61,206), and Order No. 472-A issued June 17, 1987, at (39 FERC Para. 61,316). Order No. 472 arose out of section 3401(a)(1) of the Omnibus Budget Reconciliation Act of 1986, which requires the Federal Energy Regulatory Commission (Commission) to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." On or about July 16, 1987, SOPCO received an Annual Charges Billing from the Commission for fiscal year 1987. SOPCO was required to remit, by August 31, 1987, to the Commission, SOPCO's portion of the Commission deficit. For the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA unit charge of $.0020 per MMBtu, as set by the Commission on SOPCO's Annual Charges Billing.

Copies of this filing were served on SOPCO's jurisdictional customers and interested State commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests should be filed on or before October 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24628 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-2-000 and CI88-3-000]

Texas Eastern Transmission Corp.; Applications on Behalf of Producer-Suppliers of Texas Eastern Transmission Corporation for Blanket Limited-Term Abandonment Authorization and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pregranted Abandonment

October 20, 1987.

Take notice that on October 1, 1987, as supplemented on October 8, 1987, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed applications pursuant to section 7 of the Natural Gas Act (NGA) and § 2.77[1] of the Commission's Regulations thereunder, on behalf of its producer-suppliers currently selling natural gas that is subject to the Commission's jurisdiction under the NGA, for an order (1) authorizing the blanket limited-term abandonment of sales of such gas to Texas Eastern to the extent such gas is released, and (2) issuing a blanket limited-term certificate of public convenience and necessity with pregranted abandonment authorizing the sale for resale of such gas in interstate commerce, and (3) a waiver of certain Commission regulations on behalf of producer-suppliers with respect to producer-suppliers' sales of released gas under the authorization. Texas Eastern requests such authorization for a period of three years from the date of issuance of such authorization. The applications also state that the abandonment and certificate authorizations should be considered on an expedited basis in accordance with § 2.77 of the Commission's Regulations, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Texas Eastern states that all NGA gas which at the time of release is at least equal to Texas Eastern's then effective market out price is eligible for this program and that the participation of any producer is strictly voluntary. According to Texas Eastern, the specific terms of any release will be agreed upon by it and each participating producer-supplier. Texas Eastern's applications further state that the program will be administered on a non-discriminatory basis.

According to Texas Eastern, the requested abandonment and certificate authorizations are eligible for consideration on an expedited basis because Texas Eastern's producer-suppliers are subject to substantially reduced takes without payment. The applications state that Texas Eastern is currently experiencing a supply/demand imbalance and will continue to substantially reduce takes from producer-suppliers. Texas Eastern therefore requests that the Commission follow the procedures for expedited consideration set forth in § 2.77(b) of the Commission's Regulations.

Texas Eastern states that it is willing to comply with conditions similar to

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

conditions that the Commission has attached to other like orders.

Texas Eastern states it seeks no transportation authority in its applications. Texas Eastern anticipates that any transportation of released volumes will be performed pursuant to § 284.221 of the Commission's Regulations or by individual certificate authorization in accordance with section 7(c) of the NGA.

Texas Eastern states it proposes to implement a release program (Program) upon receipt of appropriate authorization, subject to the following terms and conditions:

1. NGA gas to be released will be any gas the price of which at the time of release is at least equal to Texas Eastern's then effective market out price;

2. Texas Eastern will offer entry into the Program to all of its producer-suppliers and will administer the Program in a non-discriminatory manner; provided, however, each producer-supplier is free to determine if it wishes to have its gas released and to regulate the terms and conditions of its release. Participation in the Program by a producer-supplier will be completely voluntary to be implemented by mutual agreement between Texas Eastern and the producer-supplier;

3. All of the gas released and sold under the Program will be "surplus" gas which Texas Eastern does not need to meet its current market demands, and the gas will remain continuously subject to recall whenever Texas Eastern determines that the gas is needed to meet its service obligations;

4. Participation in the Program by producer-suppliers shall be month-to-month or for longer periods, as Texas Eastern and individual producer-suppliers may mutually agree upon, up to the maximum period of three years;

5. Participation in the Program for any period of time shall not alter the participating producer-suppliers' then existing contractual relationship with Texas Eastern other than to establish a take-or-pay credit for volumes sold under the Program;

6. The price of gas sold through the Program shall be the lesser of the producer-suppliers new third-party contract rate or the applicable maximum lawful price prescribed by the NGPA and the Commission's regulations;

7. Texas Eastern will receive credit against potential take-or-pay obligations for all gas sold by producer-suppliers through the Program;[2] and

8. Participation in the Program will not be available if any significant facility modifications, abandonments or additions are required on the part of Texas Eastern.

Texas Eastern states it is willing to accept conditions similar to those that the Commission has included in the recent orders requesting similar authority in order to expedite the handling of the applications and assure the Commission that Texas Eastern is willing and able to comply with current Commission policy. Specifically, Texas Eastern states it is willing to file a quarterly report within 45 days after the end of each calendar quarter during the authorized period.

Since any sales made hereunder may be on an extremely short term basis and may rapidly change with regard to purchaser, delivery points, and mix of gas, Texas Eastern also seeks a waiver of:

1. The filing requirements under the NGA as to the establishment and maintenance of rate schedules under Part 154 of the Commission's Regulations during the term of this partial release and abandonment;

2. The blanket affidavit filing requirements provided by § 154.94(h) of the Commission's Regulations during the term of the partial release and abandonment such that the producers may automatically collect the appropriate monthly adjustments without making a blanket affidavit filing; and

3. The filing requirements of § 154.94(k) and Part 271 of the Commission's Regulations to permit the producers of released gas to qualify for collection of any applicable allowance under section 110 of the NGPA without the necessity of making the foregoing blanket affidavit filing.

Finally, Texas Eastern states that the following is an estimate of deliverability as of September 1, 1987:

NGPA category	Estimate of deliver-ability
102	[1] 1,767
104 (Post-1974 gas)	111
104 (1973-1974 biennium gas)	6
104 (replacement contract gas or recompletion gas)	66
104 (pre-1973)	22
106(a)	24
107(c)(5)	30
108	7
109	25
	2,058

[1] MMcf/day.

Since Texas Eastern states that its producer-suppliers are subject to substantially reduced takes without payment and has requested that its applications be considered on an expedited basis, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, Dc 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be takem but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24629 Filed 10-22-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of; September 4 Through 11, 1987

During the Week of September 4 through September 11, 1987, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

[2] Texas Eastern states that it is recognized that under Interim Rule Order No. 500 issued August 14, 1987 in order for a producer to transport on a pipeline the producer must give the pipeline a volume for volume credit on take-or-pay or the pipeline and producer could mutually agree upon another arrangement. By virtue of filing its applications or accepting any authorization issued pursuant to the applications Texas Eastern states it does not waive any of its rights under Order No. 500.

the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

October 19, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 4 through Sept. 11, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 3, 1987	Indiana Refrigerator Lines, Inc., Washington, DC.	RR270-15, RR270-16, RR270-17	Request for modification/rescission in the stripper well litigation proceeding. If Granted: The August 4, 1987 Decision and Order issued to Indiana Refrigerator Lines, Milton Transportation, Inc., and Remington Freight Lines, Inc. (Case Nos. RF270-1459, RF270-1477 and RF270-1490) would be rescinded regarding the firms' applications for refund as surface transporters in the stripper well litigation proceeding.
Sept. 4, 1987	Mobil Mining & Minerals, Denver, Colorado.	KFA-0120	Appeal of an information request denial. If Granted: The July 29, 1987 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and Mobil Mining & Minerals would receive access to a complete copy of the Remedial Investigation and Feasibility Study, Food Materials Production Center.
Sept. 8, 1987	Government Accountability Project, Appleton, Wisconsin.	KFA-0122	Appeal of an information request denial. If Granted: The August 17, 1987 Freedom of Information Request Denial issued by the Inspector General would be rescinded and Government Accountability Project would receive access to documents from the Nuclear Regulatory Commission concerning Joseph S. Mitchell, EG&G (Idaho) A.K.A. EG&G Services, and the Tennessee Valley Authority.
Sept. 8, 1987	Wisco Equipment Co., Phoenix, Arizona	KFA-0121	Appeal of an information request denial. If Granted: The Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Wisco Equipment Company would receive access to documents relating to the Sandia National Laboratories Contract No. REQ-8008.
Sept. 11, 1987	Montana, Helena, Montana	KER-0033	Request for modification/rescission. If Granted: The August 26, 1987 Decision and Order (Case No. KEG-0015) issued to Montana would be rescinded and Montana's proposed plan for the stripper well litigation monies would be approved.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 4 Through Sept. 11, 1987]

Date received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
Aug. 18, 1987	Pennzoil/Kentucky	RQ10-395
Sept. 4, 1987	Briggs & Sons Getty Stations	RF265-2551
Sept. 4, 1987 thru September 11, 1987.	Crude Oil Refund Applications Received	RF272-5538 thru RF272-5997
Sept. 8, 1987	Custer County Highway Dept.	RF272-5714
Sept. 9, 1987	James D'Ambra	RF265-2552
Sept. 9, 1987	Amoco/Michigan	RQ251-396
Sept. 9, 1987	Vickers/Michigan	RQ1-397
Sept. 9, 1987	Coline/Michigan	RQ2-398
Sept. 9, 1987	National Helium/Michigan	RQ3-399
Sept. 9, 1987	Perry Gas/Michigan	RQ183-400
Sept. 10, 1987	Stewart Oil Co.	RF265-2554
Sept. 10, 1987	Lockrem Oil Co.	RF225-10906
Sept. 11, 1987	Superior Oil Co.	RF253-27
Sept. 11, 1987	Engle, Inc.	RF253-28
Sept. 16, 1987	Momsen Trucking	R270-2486

[FR Doc. 87-24581 Filed 10-22-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 24 through August 28, 1987

During the week of August 24 through August 28, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Environmental Policy Institute, 8/27/87; KFA-0112

The Environmental Policy Institute filed an Appeal from a partial denial issued by the Manager of the Nevada Operations Office of a Request for Information which the organization had submitted under the Freedom of Information Act. The Manager had denied access to an outside consultant's comments on a proposal submitted to the Marshall Islands concerning the habitability of Rongelap Atoll. The DOE determined that the document was propertly withheld pursuant to 5 U.S.C. 552(b)(5) because it was pre-decisional and deliberative. The DOE further determined that the cover letter contained no deliberative material and, therefore, should be released. Accordingly, the Appeal was granted in part.

Petition For Special Redress

Montana, 8/26/87; KEG-0015

The DOE issued a Decision and Order concerning the Petition for Special Redress filed by the State of Montana. Montana sought approval for two programs which were previously determined to fall outside the terms of the Stripper Well Settlement Agreement. The two programs are a biological weed control program and the repair of the roof of the terminal at West Yellowstone Airport. After discussing the need for Stripper Well state plans to meet the objectives of energy conservation, energy efficiency, or renewable energy alternatives; timely restitution; and overall balance; the DOE determined that neither program meets these criteria. The DOE found that Montana's weed control proposal is a research-oriented program that is not sufficiently energy-related or restitutionary and fails to meet the standard of timeliness in restitution. The DOE also found that repairing the roof of the airport would save only a small amount of fuel and is therefore not sufficiently energy-related to qualify under the Stripper Well Settlement Agreement. Accordingly, Montana's Petition for Special Redress was denied.

Implementation of Special Rfund Procedures

Thriftyman, Inc., 9/25/87; KEF-0018

The DOE issued a Decision and Order finalizing procedures to be used in distributing funds received pursuant to a settlement between the DOE and Thriftyman, Inc. Thriftyman was a wholesale purchaser-reseller of motor gasoline that allegedly failed to satisfy its supply obligations to its base period customers and diverted motor gasoline in non-base period purchasers on the spot market during the period May through December 1979. The DOE will accept applications from the customers identified in the Appendix and any other party who can demonstrate that they were injured by Thriftyman's allocation practices.

Refund Applications

Arkansas Louisiana Gas Company/ Enterprise Products Company, 8/ 25/87; RF154-9

The DOE issued a Decision and Order concerning an Application for Refund filed by Enterprise Products Co. (Enterprise) in the Arkansas Louisiana Gas Co. (Arkla) proceeding. For each product claimed by Enterprise, the DOE performed a three-prong competitive disadvantage test, examining gross excess cost, net excess cost, and above-market volumetric share. In the case of propane *Platt's* was used for price comparisons. For the other NGLs, the DOE used comparative price data submitted by Enterprise concerning its other suppliers (the multiple supplier method). The applicant received its full volumetric allocation for normal butane and commercial butane, its above-market volumetric share for iso-butane and butane/propane mix, and its gross excess cost for natural gasoline and propane. Enterprise was granted a refund totaling $881,686, representing $582,295 in principal and $299,391 in interest.

Chicago and Northwestern Transportation Company et al., 8/ 25/87; RF271-62 et al.

The DOE issued a Decision and Order approving applications submitted by seven companies for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. The DOE found that all seven applicants had established that they were members of the RWT class, and had sustantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. Accordingly, the DOE approved all seven applications. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all RWT claims. The number of gallons approved in this Decision and Order is 1,626,193,875.

Decarolis Truck Rental, Inc., Atlas Truck Rental & Leasing, 8/25/87; RF270-2353, RF 270-2386

The DOE issued a Decision and Order denying two Applications for Refund from the Surface Transporters Escrow filed by two truck rental firms. Each applicant's volume claim was based on product sold to its customers. The DOE stated that vehicle rental companies are excluded from receiving Surface Transporter refunds. Unlike Surface Transporters, who are end-users of petroleum products, vehicle rental companies function as retailers.

Duluth, Winnipeg and Pacific Railway Company, Central Vermont Railway, Inc., 8/27/87; RF271-72, RF271-73

Duluth and Central Vermont each filed an Application for Refund from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. Both corporations are "Crown Corporations" owned by the Canadian government. The DOE determined that the applications were not defeated by the language in the RWT Waiver excluding governmental entities, because that language refers only to entities of the U.S. government or the governments of the fifty states. The DOE also found that the two foreign-owned corporations were properly incorporated under the laws of one or more of the fifty states, and that the firms met all the other requirements for refunds from the RWT Escrow. Accordingly, the DOE granted the applications. The total number of gallons approved in this Decision and Order is 48,203,948.

Getty Oil Company/Acme Markets, Inc. et al., 8/26/87; RF265-2323 et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty products that were purchased. As end-users, these applicants were entitled to receive the full volumetric refund. The sum of

the refunds approved in this Decision is $40,535, representing $20,354 in principal and $20,181 in accrued interest.

Getty Oil Company/Anna Mae Bomleny et al., 8/27/87; RF265–1505 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty products that were purchased. As end-users, these applicants were entitled to receive the full volumetric refund. The sum of the refunds approved in this Decision is $10,907, representing $5,476 in principal and $5,431 in accrued interest.

Getty Oil Company/Arnold Nixon et al., 8/27/87; RF265–1516 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty products that were purchased. As end-users, these applicants were entitled to receive the full volumetric refund. The sum of the refunds approved in this Decision is $67,856, representing $34,073 in principal and $33,783 in accrued interest.

Getty Oil Company/Sylvia Smith, Eldred Bowne, 8/26/87; RF265–2473 et al.

The DOE issued a Decision and Order concerning two Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Getty Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). The sum of the refunds approved in this Decision is $190, representing $95 in principal and $95 in interest.

Gulf Oil Corporation/Cascade Gulf Service Station et al., 8/25/87; RF40–3602 et al.

The DOE issued a Decision and Order granting four Applications for Refund from the Gulf Oil Corporation consent order fund filed by retailers of Gulf refined products. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund amount claimed. Accordingly, the firms were granted refunds totalling $6,816 ($5,399 in principal plus $1,417 in interest).

Harder's Express, Inc. et al., 8/26/87; RF270–162 et al.

The DOE issued a Decision and Order approving Applications for Refund from the Surface Transporters Escrow filed by 30 trucking companies. Each of the companies is a member of the American Trucking Associations, Inc. and based its claim on either diesel fuel, motor gasoline, motor oil, gear oil, or transmission fluid that its vehicles consumed during the settlement period. The DOE approved each company's purchase volumes with adjustments in some cases to correct for products not qualifying under the terms of the Surface Transporters Escrow. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims. The total number of gallons approved in this Decision and Order is 222,442,133.

Husky Oil Company/Metro Oil Products, Inc., 8/27/87; RR161–1

The DOE issued a Decision and Order concerning a Motion for Reconsideration of a June 3, 1987 Decision and Order which granted in part an Application for Refund filed by Metro Oil Products, Inc. in the Husky Oil Company special refund proceeding. In its original Application, Metro had requested a refund of $27,298 based upon its purchases of Husky motor gasoline and diesel fuel. In the June 3, 1987 Decision, the DOE determined that Metro had made an injury showing sufficient to merit a refund of $210,656, plus interest. In its Motion, Metro requested that the DOE utilize the "three-step" competitive disadvantage method in order to determine whether Metro was entitled to a refund in the amount of its full volumetric share for its purschases of motor gasoline. Upon reconsideration, the DOE determined that the "three-step" analysis indicated that Metro was eligible for a full volumetric refund for its Husky motor gasoline purchases. Accordingly, Metro was granted an additional refund of $7,285.

J.C. Trucking, Inc. et al., 8/25/87; RF270–468 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the gallonages of refined petroleum products claimed by forty-one trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the forty-one firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the forty-one firms' refunds will be determined at a later date. The total number of gallons approved in this Decision and Order is 208,561,604.

John Bunning Transfer Company, Inc. et al., 8/25/87; RF270–935 et al.

John Bunning Transfer Co., Inc. and four other for-hire and private motor carriers filed Applications for Refund, seeking funds from the Surface Transporters Escrow established pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The DOE examined each claim and ascertained that each of the applicants is an eligible surface transporter, and its claim did not exceed the gallons of petroleum products that the applicant consumed in vehicle operations. The total volume approved in this Decision and Order is 13,130,558 gallons.

La Gloria Oil & Gas Co./Highway Oil, Inc., The Southland Corporation, Hukill Oil Company, Inc., 8/27/87; RF263–17, RF263–33, RF263–35

The DOE issued a Decision and Order concerning Applications for Refund filed by three resellers, Highway Oil, Inc., The Southland Corporation, and Hukill Oil Company, Inc., from the fund obtained by the DOE through a consent order entered into with La Gloria Oil & Gas Co. All three applicants presented evidence that they purchased refined petroleum products from La Gloria during the consent order period. The applicants purchased enough volumes to make them eligible for refunds over the $5,000 small claims threshold for resellers, but they elected to limit their claims to that level. According to the methodology set forth in *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), each applicant was found eligible for a refund of $5,000, plus interest, from the La Gloria consent order fund. The refunds approved in this Decision totaled $27,549, representing $15,000 in principal and $12,549 in interest.

Although the DOE approved Highway Oil's refund application, its refund was placed in a separate interest-bearing escrow account established for Highway pending the outcome of a current enforcement proceeding involving that firm.

Stalcup Trucking, Inc. et al., 8/25/87; RF270–1019 et al.

The DOE issued a Decision and Order concerning five Applications for Refund from the $10.75 million Surface Transporters Escrow fund established

pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the settlement period and that it was a "for hire" carrier or a private fleet operator for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume of eligible petroleum products above the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. Accordingly, all five Applications were approved, and the respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision and Order is 15,400,465.

Texas Mexican Railway Company et al., 8/26/87; RF271-45 et al.

The DOE issued a Decision and Order to four companies granting their respective Applications for Refund from the Rail and Water Transporters (RWT) Escrow. The DOE found that all four applicants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. Accordingly, the DOE approved all four applications. The total number of gallons approved in the Decision and Order is 97,275,064.

Utah Railway Company et al., 8/26/87; RF271-90 et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by seven rail transporters from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. The methods used by the applicants to substantiate their gallonages were similar to those accepted by the DOE in previous RWT decisions. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its anaylysis of all RWT claims. The total mumber of gallons approved in this Decision and Order is 1,618,979,751.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Campbell Sixty-Six Express—RF270-1232
Farmers Cooperative Association—RF270-736
Felicia Oil Company—RF225-10382
Jaime Gonzales' Gulf Service—RF40-2426
Lapeer County Intermediate School District—RF270-1260
Niles Community Schools—RF270-1259
Southland Oil Company—RF245-16
T.E. Reserve Corporation/James G. Allison, Jr.—KEG-0009

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 19, 1987.

[FR Doc. 87-24582 Filed 10-22-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 31 Through September 4, 1987

During the week of August 31 through September 4, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Citizen/Labor Energy Coalition, 9/4/87; KFA-0114

Citizen/Labor Energy Coalition filed an Appeal from a denial by the Director of the EIA Office of Oil and Gas of a Request for Information which it submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that no responsive documents existed and that the FOIA imposes no duty on the agency to create records in response to a request. Therefore, the Appeal was denied.

Tri-City Herald, 9/2/87; KFA-0113

On August 6, 1987, the Tri-City Herald filed an Appeal of a determination issued to it under the Freedom of Information Act (FOIA) on July 24, 1987 by the Assistant Manager for Administration (Manager) of the Richland, Washington Operations Office of the Department of Energy (DOE). In that determination, the Manager denied in part the Herald's FOIA request for a proposal submitted by Westinghouse Electric Corporation to enter into an operations and engineering contract for the DOE's Hanford, Washington site. The manager withheld 49 pages of the Westinghouse proposal pursuant to Exemption 4 of the FOIA which shields from disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential. In the course of conducting a de novo review of the pages in question, the Office of Hearings and Appeals (OHA) obtained the agreement of Westinghouse and the Manager to release all but one of the 49 pages at issue. With respect to that one page, which the OHA found contained proprietary information properly exempt under Exemption 4, the OHA denied the Herald's Appeal. In view of the voluntary release of the rest of the material, the OHA dismissed that aspect of the Appeal.

Petition for Special Redress

Washington, 9/4/87; KEG-0016

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the State of Washington. The State sought approval to use Stripper Well funds for three projects which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposals to use $48,000 to fund a water system leak detection and elimination program and $131,000 to construct three weather-stations designed to improve the accuracy of Washington farmers' irrigation systems. However, the DOE disapproved the State's proposal to use $750,000 to fund the State Rail Assistance Program. The DOE determined that the initial two projects would result in increased energy conservation, timely restitution to farmers and many other groups of consumers within the State and a balanced distribution of oil overcharge monies. The DOE found, however, that the State Rail Assistance Program had only an attenuated link to its intended beneficiaries, the State's farmers, and that any possible restitutionary benefits would occur too far in the future.

Remedial Orders

Lantern Petroleum Corporation, and John Mills, Economic Regulatory Administration, 8/31/87; HRO-0251, KRZ-0018

Lantern Petroleum Corp. and John Mills objected to a Proposed Remedial Order alleging that they engaged in illegal layering in 30 crude oil sales transactions. With regard to 28 of the transactions covered by the PRO, the DOE rejected the firm's claims that it

had performed traditional and historical reseller services. The DOE determined that layering did not occur in two transactions in which Lantern sold crude oil to a refiner who actually refined the purchased oil. The alleged overcharges were reduced by the amount involved in these two transactions. The DOE also found that Mills should be held personally liable for Lantern's violations since he was the president, one third shareholder, and sole individual responsible for Lantern's day-to-day business operations. Accordingly, the PRO was issued as a final Remedial Order directing Lantern and Mills to remit the revised overcharge amount of $495,025.75.

Leonard D. Rice d/b/a, Rice Oil Company, Rice-Lindquist, Inc., 9/3/87; *HRO-0154*

Leonard D. Rice d/b/a Rice Oil Company and Rice-Lindquist, Inc. (Rice) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on April 21, 1983. In the PRO, the ERA found that Rice violated the price regulations at 10 CFR Part 212, Subpart F and antecedent regulations by selling motor gasoline and diesel fuel to retail customers at prices that exceeded the maximum lawful selling prices (MLSPs) permitted under the regulations. After considering the firm's Statement of Objections, the DOE concluded that the PRO should be issued as a final Remedial Order. In reaching its conclusion, the DOE rejected the firm's contentions that: (i) Leonard Rice, Rice Oil and Rice-Lindquist do not constitute a single "firm" as that term was defined in the price regulations; (ii) the DOE should be estopped from pursuing Rice-Lindquist's alleged overcharges because Rice-Lindquist's selling prices allegedly were approved by an agent of the Internal Revenue service in 1973; (iii) the "acquired entity rule" is not applicable to Rice-Lindquist because it purchased "physical assets" of Gulf, and not a "legal entity" or a "component" of a legal entity; (iv) the ERA improperly used an estimated base period selling price in calculating MLSPs and alleged overcharges in Rice-Lindquist's sales; (v) the PRO is void because of its alleged reliance upon the "Equal Application rule"; and (vi) the PRO erroneously failed to include transportation costs incurred by Rice Oil as increased product costs in computing the firm's MLSPs.

Interlocutory Order

Texaco Inc., 9/1/87; *KRZ-0066*

Texaco Inc. (Texaco) filed a Motion for Sanctions or a Supplemental Order relating to a Decision and Order issued on April 20, 1987, which granted in part a Motion for Discovery filed by Texaco on January 9, 1987. *Texaco Inc.*, 15 DOE ¶ 84,012 (1987). In its Motion for Sanctions, Texaco claimed that the Economic Regulatory Administration (ERA) had failed to provide adequate discovery responses as directed in the April 20, 1987 Decision. Texaco therefore requested in its motion that the underlying enforcement proceeding (Case No. KRX-0024) be dismissed or, in the alternative, that a supplemental order be issued directing the ERA's immediate compliance with the terms of the discovery decision. In considering Texaco's motion, the DOE determined that the discovery responses that had been provided by the ERA were substantially adequate and consistent with the considerations expressed in the discovery decision. Accordingly, Texaco's Motion for Sanctions was dismissed.

Implementation of Special Refund Procedures

Suburban Propane Gas Corporation, 9/4/87; *KEF-0038*

The DOE issued a Decision and Order establishing procedures to be used in evaluating claims for refunds from the $1,800,000 settlement fund obtained through a consent order entered into by Suburban Propane Gas Corporation and the DOE. The settlement fund was provided by Suburban to settle alleged pricing violations by the firm and its affiliated entities in the sales of propane, butane, and natural gasoline during the consent order period, November 1, 1973 through October 31, 1978. Applicants who can demonstrate that they were injured as a result of Suburban's pricing practices during the consent order period may apply for a refund. However, reseller and retailer applicants whose claims are for $5,000 or less, end-users of Suburban's covered products, and agricultural cooperatives and certain regulated firms need only document their purchase volumes in order to receive a refund equal to the volumetric refund amount multiplied by the number of gallons of covered products purchased. Medium-sized reseller and retailer claimants, those whose volumetric share exceeds $5,000, may elect to receive as their refund the larger of $5,000 or 60 percent of their volumetric share up to $50,000. Reseller and retailer claimants who do not elect the 60 percent presumption, those whose claims exceed $50,000, and those who purchased Suburban products on the spot market will have to demonstrate injury in order to receive a refund. The specific informaiton to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Express Marine, Inc., Hines, Inc., 9/4/87; RF271-78, RF271-192

The Office of Hearings and Appeals (OHA) issued a Decision and Order to two companies granting their respective Applications for Refunds from the Rail and Water Transporters Escrow. OHA found that both applicants had established that they were members of the RWT class, and had substantiated their purchases of the volumes of U.S. petroleum products claimed in their respective applications. Accordingly, OHA approved both applications. The total number of gallons approved in the Decision and Order was 34,010,952.

Getty Oil Company/Ace Auto Service Station et al., 8/31/87; RF265-0685 et al.

The DOE issued a Decision and Order concerning 79 Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In 61 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining 18 cases, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $352,710, representing $177,114 in principal and $175,596 in accrued interest.

Getty Oil Company/Andrew A. Cantone et al., 9/3/87; RF265-2213 et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. None of them was entitled to a refund greater than the $5,000 small claims refund amount. The total of the refunds approved in this Decision is $157,920, representing $79,013 in principal and $78,907 in accrued interest.

Getty Oil Company/Backlund Oil Company et al., 8/31/87; RF265-0430 et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its

Getty purchases. In 27 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining 20 cases, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $195,713 representing $98,276 in principal and $97,437 in accrued interest.

Getty Oil Company/Bill's Getty Service Et Al., 9/3/87; RF265-2367 Et Al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In 22 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining two cases, the applicants elected to limit their claims to $5,000. The total refunds approved in this Decision are $74,856, representing $37,453 in principal and $37,403 in accured interest.

Getty Oil Company Bud's Getty Service Et Al., 9/4/87; RF265-28 Et Al.

The DOE issued a Decision and Order concerning 32 Applications for Refund filed by resellers or retailers of products covered by a consent order that the agency entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In 13 of the these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining 19 cases, the applicants elected to limit their claims to $5,000. The total refunds approved in this Decision are $210,277, representing $105,212 in principal and $105,065 in accrued interest.

Hays Tug & Launch Service, Inc. Et Al., 8/31/87; RF271-202 Et Al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six water transporters for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The Methods of calculating gallonage used by the applicants were similar to those accepted by the DOE in previous Rail and Water decisions. The DOE found that one of the applicants, Reinauer Transportation Companies (Reinauer), failed to pro-rate its gallonage for 1973 and 1981 to include its purchases only for those months covered by the Settlement Period. Accordingly, the DOE recomputed Reinauer's gallonage. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims. The total number of gallons approved in this Decision is 189,428,291.

Midwest Hauler, Inc. Et Al., 8/31/87; RF270-1252 Et Al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of 11 Applications for Refund from the Surface Transporters Escrow established as the result of the Stripper well Settlement Agreement. The DOE approved claims based on Interstate Commerce Commission annual reports but excluded those gallons used by trucks rented with drivers ("owner operators"). Gallons used by non-hauling vehicles such as farm tractors and off-road construction equipment were also excluded. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

North Star Transport, Inc., Troy Aggregate Haulers, Inc., 9/2/87; RF270-1730, RF270-1741

The Department of Energy (DOE) issued a Decision and Order regarding two Applications for Refund from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. The refund applications were filed by American Trucking Associations, Inc. on behalf of North Star Transport, Inc. (North Star) and Troy Aggregate Haulers, Inc. (Troy). The DOE determined that the claim filed on behalf of North Star should be denied because the firm resold all of its petroleum product purchases to its owner operators. The DOE likewise excluded owner operator gallons from Troy's claim, thereby limiting the firm's refund to the 663,926 gallons of fuel that Troy purchased for use in its company vehicles. The DOE will determine a per gallon refund amount and establish the amount of Troy's refund after it completes analysis of all Surface. Transporters claims.

Rollins Leasing Corporation, 9/4/87; RF270-958

Rollins Leasing Corporation filed an Application for Refund, seeking funds from the Surface Transporters Escrow established pursuant to the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 387. On the basis of the firm's business operations, the DOE determined that Rollins is a vehicle rental company, and therefore is not an eligible surface tansporter for the purpose of this refund proceeding. The DOE therefore denied Rollins' refund request.

Thurston Motor Lines, Inc., 9/1/87; RF270-1074

The Department of Energy (DOE) issued a Decision and Order partially approving an Application for Refund from the Surface Transporters Escrow established pursuant to the Stripper Well Settlement Agreement. The portion of the Applicant's claim based on fuel purchased for over-the-road vehicles was approved, while the portion based on fuel purchased for off-road use was disapproved. The DOE will determine a per gallon refund amount and the amount of the Applicant's refund after it completes its analysis of all Surface Tansporter claims. The total number of gallons approved in this Decision is 79,228,329.

Tresler Oil Company/Sears, Roebuck and Company, 9/1/87; RF 295-6

In accordance with the procedures outlined in *Tresler Oil Co.*, 15 DOE ¶ 85,522 (1987), the DOE issued a Decision and Order granting the Application for Refund filed by Sears, Roebuck and Co. Sears was an end-user and therefore was presumed to have been injured by Tresler's alleged pricing practices. The DOE granted a refund totalling $39, representing $35 in principal plus $4 in interest.

Dismissals

The following submissions were dismissed.

Company Name	Case No.
Jacques A. Roy	RF285-13
Malcolm Pitt	RF285-10
R.W. McKinney	RF265-1504
Ron's Getty	RF265-928
Southern Pacific Transportation Company.	RF271-187

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 19, 1987.

[FR Doc. 87-24583 Filed 10-22-87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3281-3]

Environmental Impact Statements Filed October 12 Through October 16, 1987; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 870359, DSuppl, SFW, REG, Sport Hunting of Migratory Birds, Issuance of Annual Regulations, Updated Information, Due: December 31, 1987, Contact: Rollin Sparrowe (202) 254-3207.

EIS No. 870360, Draft, AFS, OR, ID, WA, CA, Pacific Northwest Region, National Forest System Lands, Competing and Unwanted Vegetation Management Plan, Due: January 15, 1988, Contact: Gary Larsen (503) 221-2727.

EIS No. 870361, Final, FHW, MN, MN-Forest Highway-11 Construction, St. Louis CSAH-10 and St. Louis CR-565 in Hoyt Lakes to TH-61 in Silver Bay, Lake and St. Louis Counties, Due: November 23, 1987, Contact: Lawrence Brown (612) 290-3239.

EIS No. 870362, Final, COE, LA, West Bank of the Mississippi River Hurricane Surge Protection, New Orleans Vicinity, Jefferson Parish, Due: November 23, 1987, Contact: David Reece (504) 862-2522.

EIS No. 870363, Final, FHW, ME, Sears Island Marine Dry Cargo Terminal and Access Road Construction, Waldo County, Due: November 23, 1987, Contact: William Richardson (207) 622-8487.

EIS No. 870364, Final, FHW, NC, Silas Creek Parkway Completion, Silas Creek Parkway to North Point Boulevard, Forsyth County, Due: November 23, 1987, Contact: Kenneth Bellamy (919) 856-4346.

EIS No. 870365, Draft, BLM, OR, Brothers/ LaPine Planning Area, Resource Management Plan, Princeville District, Due: January 4, 1988, Contact: Brian Cunninghame (503) 447-4115.

EIS No. 870336, Final, UMT, MD, Baltimore Northeast Corridor Extension Transit Improvements, Baltimore County, Due: November 23, 1987, Contact: Robert Stout (202) 366-0096.

EIS No. 870367, Final, FAA, TN, Nashville Metropolitan Airport Runway Improvements, Approval and Site Grading, Davidson County, Due: November 23, 1987, Contact: Otis Welch (901) 521-3495.

Amended Notices

EIS No. 870338, Draft, FHW, VT, NY, US 7 in Bennington, VT Improvements, US 7 to US 7/VT-67A Interchange; VT-9 in Bennington, VT and NY-7 in Hoosick, NY Improvements, Bennington County, VT and Rensselaer County, NY, Due: November 30, 1987, Published FR 10-9-87—Filing date Reestablished.

EIS No. 870342, Final, BLM, NV, Winnemucca District Wilderness Study Areas, Wilderness Recommendations, Designation, Due: December 30, 1987, Published FR 10-9-87—Review period extended.

EIS No. 870343, Final, BLM, NV, Egan Resource Area, Wilderness Study Areas, Wilderness Recommendations, Designation, Due: December 30, 1987, Published FR 10-9-87—Review period extended.

Dated: October 20, 1987.

Barbara Bassuener,

Acting Deputy Director, Office of Federal Activities.

[FR Doc. 87-24645 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-M

[AAA-FRL-3280-9]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of debarred, suspended, or voluntarily excluded persons.

SUMMARY: 40 CFR 32.400 requires the Directors, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Branch, Grants Administration Division, at (202) 475-8025.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM-216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A.F. Beil Electric Company, Inc. (Youngstown, OH)	85-0014-00	D	06-27-85	06-26-88	§ 32.20
Alle-Catt Asphalt, Inc. (Allegany, NY)	86-0072-02	D	07-29-87	07-28-90	§ 32.200(a)(3)
Altman, Larry L. (Charleston, SC)	85-0063-03	S	07-29-85	OPEN	§ 32.300(b)
American Recovery Co., Inc. (Glen Burnie, MD)	86-0011-00	D	08-20-86	08-19-89	§ 32.200(f)(i)
Applied Science Distributors (Pensacola, FL)	87-0013-00	D	02-05-87	04-02-90	§ 32.200(a)(i)
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	D	12-02-83	10-29-88	§ 32.200(b)
Azzil Trucking Co., Inc. (Roslyn, NY)	85-0008-02	D	09-11-86	09-10-89	§ 32.200(a)(b)
Baranowski, Richard (Kingston, PA)	87-0048-01	S	07-17-87	OPEN	§ 32.300(b).
Barnum, James Charles (Utica, MI)	86-0010-01	D	12-10-85	12-09-88	§ 32.200(a)
Batzer Construction Co., Inc. (St. Cloud, MN)	85-0052-00	D	03-07-86	08-05-90	§ 32.200(a)
Batzer, Bruce (St. Cloud, MN)	85-0052-01	D	03-07-86	08-05-90	§ 32.200(a)
Batzer, Robert (St. Cloud, NM)	85-0052-02	D	03-07-86	08-05-90	§ 32.200(a)
Beckham, Charles (Detroit, MI)	84-0030-02	D	02-24-86	07-30-89	§ 32.200(a)(b)
BECO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3)

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
B.E.S. Environmental Specialist, Inc. (Kingston, PA)	87-0048-00	S	07-17-87	OPEN	§ 32.300(b)
Bell, Bobby (Sulphur, LA)	85-0071-01	D	03-06-86	03-05-89	§ 32.200(a)(b)
Bell, Edwin (Sulphur, LA)	85-0071-02	D	03-06-86	03-05-89	§ 32.200(a)(b)
Blackwelder, Ray Martin (Concord, NC)	84-0011-01	D	06-27-85	06-26-88	§ 32.200(a)
Bowers, Darralyn (Detroit, MI)	84-0030-01	D	02-24-86	05-11-89	§ 32.200(a)(b)
Bridges, William D., Jr. (Wilmington, NC)	85-0069-01	D	04-09-86	04-08-89	§ 32.200(a)
Bryan, Charles B. (Corpus Christi, TX)	87-0010-03	S	07-28-87	OPEN	§ 32.200(a)(c)(i)
Cannady, Nathaniel Ellis (Asheville, NC)	86-0047-01	D	03-18-86	07-15-89	§ 32.200(a)(i)
Carson, Charles (Grosse Point Woods, MI)	85-0066-00	D	03-18-86	04-25-89	§ 32.200(b)
Carson, E. Eugene (Statesville, NC)	85-0004-01	D	01-06-86	01-05-89	§ 32.200(a)
City Chemicals Company, Inc. (Orlando, FL)	86-0038-02	D	10-02-86	11-23-89	§ 32.200(a)(1)
City Environmental Services, Inc. (Orlando, FL)	86-0038-03	D	10-02-86	11-23-89	§ 32.200(a)(1)
City Fuel Oil Company (Orlando, FL)	86-0038-05	D	10-02-86	11-23-89	§ 32.200(a)(1)
City Industries, Inc. (Orlando, FL)	86-0038-01	D	10-02-86	11-23-89	200§ 32.(a)(1)
Commonwealth Companies Incorporated (Lincoln, NE)	86-0100-01	S	11-12-86	OPEN	§ 32.200(a)(1)
Commonwealth Electric Company, Inc. (Lincoln, NE)	86-0100-00	S	09-09-86	OPEN	§ 32.300(b)
Crolich, Peter V. (Mobile, AL)	87-0017-02	D	06-18-87	06-17-90	§ 32.200(a)(i)
Crossgrove, Richard (Pensacola, FL)	87-0013-01	D	02-05-87	04-02-90	§ 32.200(a)(i)
Cryer, John P. (Baton Rouge, LA)	85-0062-03	S	07-29-85	OPEN	§ 32.300(b)
Cummins Construction Company, Inc. (Enid, OK)	86-0069-00	S	09-08-86	OPEN	§ 32.300(b)
Cusenza, Sam (Ypsilanti, MI)	85-0024-02	D	02-24-86	04-02-89	§ 32.200(a)(b)
Cuti, Vincent J., Jr. (Huntington, NY)	83-0040-03	D	04-30-85	04-29-88	§ 32.200(a)
Dellinger, Theodore C. (Monroe, NC)	84-0012-01	VE	03-12-85	03-11-88	§ 32.200(a)
Denson, David A. (Wilmington, NC)	87-0043-01	D	01-12-87	01-11-88	§ 32.200(a)
Domanski, Gary Henry (Utica, MI)	86-0010-02	D	12-10-85	12-09-88	§ 32.200(a)
Driscoll, John William (Dundale, MD)	86-0011-02	D	10- 5-86	10-14-89	§ 32.200(f)(1)
Dykes, Lamar D. (Nederland TX)	85-0071-03	D	03-06-86	03-05-89	§ 32.200(a)(b)
Enmanco (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a)
Environmental Management Corporation (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a)
Environmental Technology of America, Inc. (Wilbraham, MA).	86-0071-00	D	02-05-87	02-04-90	§ 32.200(a)
Federal Chandros, Inc. (Brooklyn, NY)	87-0040-00	S	07-02-87	OPEN	§ 32.300(b)
Fields, Leroy (Pensacola, FL)	87-0013-02	D	02-05-87	04-02-90	§ 32.200(a)
Fishback & Moore, Inc. (Dallas,TX)	84-0023-00	D	01-15-86	10-19-87	§ 32.200(a)
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a)
Foley, Bancroft T. (Washington, DC)	86-0004-03	D	03-07-86	03-06-89	§ 32.200(a)
Franklin Wiring Co. (Youngstown, OH)	85-0044-00	D	09-04-85	09-03-88	§ 32.200((a)(3)
FSA Engineering Consultants (Winfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a)
Gates and Fox, Ltd. (Tempe, AZ)	87-0010-00	S	07-28-87	OPEN	§ 32.200(a)(c)(i)
Gelb, Michael (Brooklyn, NY)	87-0040-01	S	07-02-87	OPEN	§ 32.300(b)
Gelb, Michael (Brooklyn, NY)	87-0040-02	S	07-02-87	OPEN	§ 32.300(b)
Geuther, Herbert G. (Philadelphia, PA)	86-0004-04	D	03-07-86	03-06-89	§ 32.200(a)
Goodloe, George M. (Jacksonville, FL)	86-0099-01	D	08-05-87	02-04-89	§ 32.200(a)(3)(i)
Graves, George William (Wilmington, NC)	85-0069-02	D	03-05-86	03-04-89	§ 32.200(a)
Greer, Arthur (Matiland, FL)	86-0038-00	D	10-02-86	11-23-89	§ 32.200
Gross, William R. (Big Springs, TX)	86-0002-01	D	10-06-86	10-05-89	§ 32.200(a)
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	09-26-85	09-25-88	§ 32.200(a)(3)
Herring, Donald W. (Wilson, NC)	83-0044-01	D	10-11-87	10-10-87	§ 32.200(a)
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3)
Hochreiter, Herbert (Roslyn, NY)	85-0008-01	D	09-11-86	09-10-89	§ 32.200(a)(b)
Hodges Electric Company (Wilmington, NC)	85-0070-00	D	04-04-86	04-03-89	§ 32.200(a)
Howard P. Foley, Company (Washington, DC)	86-0004-00	D	03-07-86	03-06-89	§ 32.200(a)
Hugo Schulz, Inc. (Lakefield, MN)	85-0047-00	D	05-01-86	04-30-89	§ 32.200(a)
Ingber, Brian (S. Fallsburg, NY)	86-0096-01	D	04-24-87	02-23-90	§ 32.200(a)
Insulation Speciality and Supply, Inc. (Cleveland, OH)	84-0025-00	D	10-04-84	10-03-87	§ 32.200(c)(i)
Interstate Concrete Products, Inc. (Jackson, MS)	87-0041-00	D	07-28-87	OPEN	§ 32.200(c)(i)
J.A. LaPorte, Inc. (Arlington, VA)	86-0037-00	D	08-29-86	08-28-89	§ 32.200(a)(3)
Jerlow, John A. (Lakefield, MN)	85-0047-02	D	05-01-86	04-30-89	§ 32.200(a)
Jerpbak, Daniel R. (Owatonna, MN)	86-0024-01	D	09-25-86	09-24-89	§ 32.200(i)
Johnson, C. Theodore (Indianapolis, IN)	84-0023-04	D	03-04-86	03-03-89	§ 32.200(a)(f)
Jordan, William F. (Tempe, AZ)	87-0010-02	S	07-28-87	OPEN	§ 32.200(a)(c)(i)
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	09-26-85	09-25-88	§ 32.200(a)(3)
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	09-26-85	09-25-88	§ 32.200(a)(3)
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	10-04-84	10-03-87	§ 32.200(c)(i)
Kruse, Lloyd C. (Lakefield, MN)	85-0047-01	D	05-01-86	04-30-89	§ 32.300(a)
Kruse, William B. (Tempe, AZ)	87-0010-01	S	07-28-87	OPEN	§ 32.200(b)
L&J Waste Service, Inc. (Hialeah, FL)	85-0079-02	D	12-19-86	12-18-89	§ 32.300(a)(i)
Law, David P. (Greenwell Springs, LA)	85-0064-00	S	07-29-85	OPEN	§ 32.300(b)
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	S	07-29-85	OPEN	§ 32.200(b)
Lee, Herbert P., III. (Sumter, SC)	84-0013-01	VE	02-14-85	12-31-87	§ 32.200(a)

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Lench, Frank P. (Lafayette, CA)	86-0004-01	D	03-07-86	03-06-89	§ 32.200(a)
Leyendecker Highway Contractors, Inc. (Laredo, TX)	86-0014-00	D	07-17-86	03-25-88	§ 32.200(a)
Lizza Industries, Inc. (Roslyn, NY)	85-0008-00	D	09-11-86	09-10-89	§ 32.200(a)(b)
Lofgren, Sven (Lincoln, NE)	87-0014-01	S	11-12-86	OPEN	§ 32.200(i)
McDowell Contractors, Inc. (Nashville, TN)	84-0014-00	VE	12-23-85	12-22-88	§ 32.200(a)
McGill and Smith (Amelia, OH)	86-0092-00	VE	11-12-86	11-11-87	§ 32.200(e)(i)
McGonagle, Joseph D. (Everett, MA)	86-0041-01	VE	11-17-86	11-16-87	§ 32.200(a)
Meyer-Rohlin, Inc. (Buffalo, MN)	86-0081-00	S	04-01-87	OPEN	§ 32.200(a)(i)
Meyer, Thore P. (Buffalo, MN)	86-0081-01	S	04-01-87	OPEN	§ 32.200(a)(i)
Midhampton Asphalt (Roslyn, NY)	85-0008-03	D	09-11-86	09-10-89	§ 32.200(a)(b)
Millspaugh, Michael J. (Mobile, AL)	86-0107-02	D	06-18-87	06-17-90	§ 32.200(a)
Modern Electric Co. (Statesville, NC)	85-0004-00	D	01-06-86	01-05-89	§ 32.200(a)
Moore, Gray E. (Jr.) (Greenwood, SC)	86-0108-00	D	08-19-86	08-18-89	§ 32.200
Moorehead, Dennis L. (Graniteville, SC)	84-0006-01	D	01-11-85	01-10-88	§ 32.200(a)
Moorse, Lawrence (Marshall, MN)	85-0053-01	D	12-17-85	12-16-88	§ 32.200(a)(3)
Mystic Bituminous Products Company, Inc. (Everett, MA)	86-0041-00	VE	11-17-86	11-16-87	§ 32.200(a)
Neal, George D. (Hamden, CT)	86-0040-01	VE	01-09-87	01-08-88	§ 32.200(a)
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§ 32.200(e)(i)
Owens, Jerry B. (Southfield, MI)	85-0065-00	D	02-24-86	03-26-89	§ 32.200(b)
Parkhill-Goodloe Co., Inc. (Jacksonville, FL)	86-0099-00	VE	04-16-87	10-15-88	§ 32.200(a)
Piccinonna, Julio (Hollywood, FL)	85-0079-01	D	05-11-87	05-10-90	§ 32.200(a)
Pinney, J.A. Bruce (Bala Cynwyd, PA)	84-0023-06	D	01-15-86	03-03-89	§ 32.200(a)(f)
Pipeline Renovation Service, Inc. (Tacoma, WA)	86-0078-00	D	07-02-86	08-07-89	§ 32.200(c)(i)
Pirnos, Wayne (Woodbridge, NY)	86-0096-03	D	04-24-87	04-23-90	§ 32.200(a)
Polk, Edward B. (Jackson, MS)	87-0041-01	D	07-28-87	OPEN	§ 32.200(c)(i)
Regenscheid, Charles E. (St. Peter, MN)	85-0019-03	VE	12-19-85	12-18-87	§ 32.200(a)(3)
Resource Conservation & Recovery of America, Inc. (Orlando, FL).	86-0038-04	D	10-02-86	11-23-89	§ 32.200(a)(i)
Rio Grande Construction Company (Bunkie, LA)	85-0063-00	S	07-29-85	OPEN	§ 32.300(b)
Rogers, Joseph J. (Pittsburgh, PA)	86-0004-02	D	03-07-86	03-06-89	§ 32.200(a)
Rol-Away Systems, Inc. (Hollywood, FL)	85-0079-00	D	12-19-86	12-18-89	§ 32.200(a)(i)
Rupp Construction Company, Inc. Slayton, MN	85-0048-00	D	01-17-86	07-16-89	§ 32.200(a)
Rupp, Douglas (Slayton, MN)	85-0048	D	07-16-86	07-16-89	§ 32.200(a)
Sarandos, Constantino (Gus) (Tacoma, WA)	86-0078-02	D	07-02-86	08-07-89	§ 32.200(c)(i)
Sarandos, Dolores K. (Tacoma, WA)	86-0078-01	D	07-02-86	08-07-89	§ 32.200(c)(i)
Sarandos, George (Tacoma, WA)	86-0078	D	07-02-86	08-07-89	§ 32.200(c)(i)
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-09-88	§ 32.200(a)(3)
Sauseda, Roy (Bunkie, LA)	85-0063-02	D	07-29-85	10-13-89	§ 32.200(a)(i)
Schrr, Paul C. (III) (Lincoln, NE)	87-0014-00	S	11-12-86	OPEN	§ 32.200(i)
Service Scaffold,Inc. (S. Fallsburg, NY)	86-0096-00	D	04-24-87	04-23-90	§ 32.200(a)
Seymour Sealing Service, Inc. (Hamden, CT)	86-0040-00	VE	01-09-87	01-08-88	§ 32.200(a)
Smith, Norman F. (Wilbraham, FL)	86-0071-01	D	02-05-87	02-04-90	§ 32.200(a)
Smith, Paul F. (Lakefield, MN)	85-0047-03	D	05-01-86	04-30-89	§ 32.200(a)
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(i)
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	08-26-85	08-26-88	§ 32.200(a)
Suburban Grading & Utilities, Inc. (Norfolk, VA)	85-0034-00	S	06-18-87	OPEN	§ 32.200(i)
Tow Brothers Const., Company (Fairmont, MN)	85-0054-00	D	01-22-86	01-21-89	§ 32.200(a)
Tow, James (Fairmont, MN)	85-0054-01	D	01-22-86	01-21-89	§ 32.200(a)
Toy, Daniel Lee (Utica, MI)	860010-03	D	12-10-85	12-09-88	§ 32.200(a)
Turbre Enterprises (Bunkie, LA)	85-0062-01	S	07-29-85	OPEN	§ 32.300(b)
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	07-29-85	OPEN	§ 32.300(b)
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	07-29-85	OPEN	§ 32.300(b)
Tubre, Thomas (Bunkie, LA)	85-0063-01	S	07-29-85	OPEN	§ 32.300(b)
Tucker Brothers Contracting Co. (Pell City, AL)	83-0061-00	D	11-26-84	11-25-87	§ 32.200(a)
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	11-26-84	11-25-87	§ 32.200(a)
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	11-26-84	11-25-87	§ 32.200(a)
Twedell, David Bruce (Gainesville, FL)	83-0020-01	D	08-30-85	08-29-87	§ 32.200(a)
Universal Engineering & Supply, Inc. (Sulphur, LA)	85-007-00	D	03-06-86	03-05-89	§ 32.200(a)(b)
Universal Engineering (Sulphur, LA)	85-0071-05	D	03-06-86	03-05-89	§ 32.200(a)(b)
Universal Wheels, Inc. (Sulphur, LA)	85-0071-06	D	03-06-86	03-05-89	§ 32.200(a)(b)
Valentini, Joseph (Ypsilanti, MI)	85-0024-01	D	02-24-86	04-02-89	§ 32.200(a)(b)
W.V. Pangborne & Co., Inc. (Bala Cynwyd, PA)	84-0023-05	D	01-15-86	10-19-87	§ 200(a)(f)
Watson Electrical Construction Co. (Wilson, NC)	86-0109-00	D	12-19-86	12-18-89	§ 32.200(i)
Watson-Flagg Electric Co., Inc. (Indianapolis, IN)	84-0023-03	D	04-28-86	10-19-87	§ 32.200(a)
Williams, G. Marvin (Asheville, NC)	86-0047-02	D	03-18-86	07-15-89	§ 32.200(i)
Wolverine Disposal, Inc. (Ypsilanti, MI)	85-0024-00	D	02-24-86	04-02-89	§ 32.200(a)(b)
Womack, Jerry T. (Norfolk, VA)	85-0034-01	S	06-18-87	OPEN	§ 32.200(i)
Young, Frank Paul (Sr.) (Glen Burnie, MD)	86-0011-01	D	08-20-86	08-19-89	§ 32.200(f)(i)

[1] D = Debarred; S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 87-24571 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-83002F; FRL-3280-7]

Decision on Waiver Application of Supelco, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Decision on waiver request.

SUMMARY: EPA under 40 CFR Part 766 requires testing of specified chemical substances to determine whether they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs). However, provisions are made for exclusion from, or waiver of, these requirements if an appropriate application is made to the Agency and is approved. EPA received such a request for a waiver of these requirements from Supelco, Inc. The Agency has decided to grant the request for the chemical which Supelco manufactures or imports. Supelco claims the chemical name as confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA under 40 CFR Part 766 (52 FR 21412, June 5, 1987) requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

A waiver of the testing requirements of Part 766 may be granted under 40 CFR 766.32(a)(2) (i) through (ii) if: (1) 100 kilograms or less of the product are produced annually exclusively for research and development, or (2) the cost of testing would be so high as to drive the chemical substance off the market or prevent resumption of manufacture and it will be produced in such a manner that there will be no unreasonable risk during manufacture, import, processing, distribution, use, or disposal of the substance. Under 40 CFR 766.32(a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for a waiver must be made before September 3, 1987 for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987, or 60 days prior to resumption of manufacture or import of a chemical substance not being manufactured or processed as of June 5, 1987.

Supelco, Inc. requests that the requirements of the rule be waived with respect to all chemicals it manufactures subject to the rule because it produces them at levels of 100 kilograms or less and uses them only for research and development purposes.

EPA confirms that Supelco, Inc. qualifies for a research and development waiver for the chemical which it currently manufactures.

The Agency received no comments on Supelco, Inc.'s waiver request.

Dated: October 15, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-24574 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-40014; FRL-3280-3]

Crotonaldehyde and 1,6-Diisocyanatohexane; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice requests certain information on crotonaldehyde (CAS No. 4170-30-3) and 1,6-diisocyanatohexane (CAS No. 822-06-0). The TSCA Interagency Testing Committee (ITC) believes that the specified information is needed to reasonably predict or detemine effects on human health or the environment. If the requested information is not available the ITC may recommend priority consideration for testing to develope the data in a future report to the EPA Administrator.

DATE: Comments and information, identified by the document control number [OPTS-40014], should be submitted on or before January 21, 1988.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Brink, Executive Secretary, Interagency Testing Committee (TS-792), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and phone number: Rm. E-058, 401 M St., SW., Washington, DC 20460, (202-382-3820).

SUPPLEMENTARY INFORMATION: The ITC occasionally publishes a notice requesting certain information needed to predict or determine the effects of chemicals on human health or the environment. Notices of this sort generally are reserved for circumstances where the amount of needed information is relatively small. They provide industry and the general public an opportunity to provide additional information within a prescribed time period. Information from unpublished or ongoing health and safety studies, for example, may help the ITC to decide whether or not to recomend a chemical in a future report to the EPA Administrator. The completeness and quality of the submitted information or data plays a major role in the Committee's considerations. At the end of the submission period, the Committee will re-evaluate the chemicals in this notice and make a final decision regarding their disposition.

The TSCA Interagency Testing Committee (ITC) may recommend crotonaldehyde (CAS NO. 4170-30-3) for certain ecological effects testing in a future report to the EPA Administrator. Those ecological effects are (1) acute toxicity with cold water fish (e.g. rainbow trout), (2) acute toxicity with freshwater invertebrates (e.g. daphnids), and (3) effects on freshwater algae (e.g. *Selenastrum*). Especially desirable would be data obtained using flow-through techniques for fish and invertebrate tests and measured quantities of test substance. There appears to be substantial U.S. production of this compound. There appears to be significant environmental exposure to crotonaldehyde and the ITC has found only fragmentary and inconclusive information on the ecological effects endpoints of concern.

The ITC may recommend 1,6-diisocyanatohexane (CAS No. 822-06-0) for long-term toxicity tests and carcinogenicity. There is believed to be substantial exposure potential, especially in automotive and other refinishing applications and it is believed that there may be unpublished data on long-term toxicity and carcinogenicity.

If additional information is received by January 21, 1988, the Committee will detemine whether the new information would justify modifying its intention to recommend these chemicals.

The information submitted will become part of the public record of the ITC review process unless it is clearly designated as Confidential Business Information (CBI). Submitters should separate CBI from other information and mark such information clearly as "TSCA CBI." It will be treated in accordance with procedures outlined in the "TSCA Confidential Business Information Security Manual."

Information or data are being solicited from industry and the public on crotonaldehyde and 1,6-

diisocyanatohexane. Information is requested by January 21, 1988.

Dated: October 8, 1987.

James K. Selkirk,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 87-24575 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59836; FRL-3280-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 1722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of fourteen such PMNs and provides the summary.

DATES: Close of Review Period:

Y 87-263—October 14, 1987.

Y 88-1, 88-2, 88-3, and 88-4—October 22, 1987.

Y 88-5, 88-6, 88-7, 88-8, and 88-9—October 25, 1987.

Y 88-10, 88-11, and 88-12—October 26, 1987.

Y 88-13—October 27, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-263

Manufacturer. S.C. Johnson and Son, Incorporated.

Chemical. (G) Aqueous acrylic copolymer.

Use/Production. (G) Water-borne polymer for coatings. Prod. range: Confidential.

Y 88-1

Importer. Confidential.

Chemical (G) Stylene-acrylic resin.

Use/Import. (G) Polymeric binder for electro duplicator toners. Import range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

Y 88-2

Manufacturer. Stepan Company.

Chemical. (G) Polyester polyol.

Use/Production. (S) Industrial and commercial polyol to be used in the production of polyurethane and urethane modified polyisocyanurate foams. Prod. range: Confidential.

Y 88-3

Manufacturer. Confidential.

Chemical. (G) Polyurethane resin.

Use/Production. (S) Site-limited polyurethane resin for coating metal or wood. Prod. range: 8,250 to 16,500 kg/yr.

Y 88-4

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial vehicle for making printing ink. Prod. range: 19,500 to 25,000 kg/yr.

Y 88-5

Manufacturer. Confidential.

Chemical. (G) Rosin-modified fumaric resin.

Use/Production. (S) Industrial binder and the application is in lithographic printing inks, both heat set web offset and sheet fed types. Prod. range: Confidential.

Y 88-6

Importer. Confidential.

Chemical. (G) Copolymer of adipic acid tetrahydrophthalic acids with ethylene glycol and dipropoxylated of bisphenol A.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Y 88-7

Importer. Confidential.

Chemical. (G) Copolymer of adipic and fumaric acids with (ethylenoxy propylene) glycol and di propoxilated bisphenol A.

Use/Import. (G) Industrial open, non-dispersive use. Import range: Confidential.

Y 88-8

Importer. Confidential.

Chemical. (G) Elastomer of isophorondiisocyanate modified polyester based on adipic acid and a mixture of glycols chain extended with diamine.

Use/Import. (G) Industrial open, non-dispersive use. Import range: Confidential.

Y 88-9

Importer. Confidential.

Chemical. (G) Copolymer of fumaric acid with (ethylenoxy propylene) glycol and nonylphenoxy ethanol.

Use/Import. (G) Industrial open, non-dispersive use. Import range: Confidential.

Y 88-10

Manufacture. Confidential.

Chemical. (G) Polyurethane resin.

Use/Production (S) Coatings. Prod. range: Confidential.

Y 88-11

Manufacture. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Coatings. Prod. range: Confidential.

Y 88-12

Importer. MTC America, Incorporated.

Chemical. (S) Styrene with methyl methacrylate, iso-butyl acrylate, 2-hydroxyethyl methacrylate and glycidyl methacrylate.

Use/Import. (S) Industrial powder coating. Import range: Confidential.

Y 88-13

Importer. Confidential.

Chemical. (G) Copolymer of dipropoxylated bisphenol A, ethylene glycol and fumaric acid.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

Date: October 13, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-24576 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51697; FRL-3280-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires

any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of sixty such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 88-2, 88-3, 88-4, 88-5, 88-6, 88-7, 88-8, 88-9, 88-10, 88-11, 88-12, and 88-13—December 31, 1987.

P 88-14, 88-15, 88-16, 88-17, 88-18, 88-19, 88-20, 88-21, 88-22, 88-23, 88-24, 88-25, 88-26, 88-27, 88-28, 88-29, 88-30, and 88-31—January 2, 1988.

P 88-32, 88-33, 88-34, 88-35, 88-36, 88-37, 88-38, 88-39, 88-40, 88-41, 88-42, 88-43, 88-44, 88-45, 88-46, 88-47, 88-48, 88-49, 88-50, 88-51, 88-52, 88-53, 88-54, 88-55, 88-56, and 88-61—January 3, 1988.

P 88-57, 88-58, 88-59, and 88-60—January 4, 1988.

Written comments by: P 88-2, 88-3, 88-4, 88-5, 88-6, 88-7, 88-8, 88-9, 88-10, 88-11, 88-12, and 88-13—December 1, 1987.

P 88-14, 88-15, 88-16, 88-17, 88-18, 88-19, 88-20, 88-21, 88-22, 88-23, 88-24, 88-25, 88-26, 88-27, 88-28, 88-29, 88-30, and 88-31—December 3, 1987.

P 88-32, 88-33, 88-34, 88-35, 88-36, 88-37, 88-38, 88-39, 88-40, 88-41, 88-42, 88-43, 88-44, 88-45, 88-46, 88-47, 88-48, 88-49, 88-50, 88-51, 88-52, 88-53, 88-54, 88-55, 88-56, and 88-61—December 4, 1987.

P 88-57, 88-58, 88-59, and 88-60—December 5, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51697]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS -794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-2

Manufacturer. Confidential

Chemical. (G) A chain extended, hydroxy terminated urethane.

Use/Production. (G) Adhesive curative. Prod. range: Confidential.

P 88-3

Importer. Confidential.

Chemical. (G) Modified styrene copolymer.

Use/Import. (G) Styrene copolymer for photo copy. Import range: Confidential.

Toxicity Data. Acute oral: 5.0 g/kg; Ames test: Non-mutagenic.

P 88-4

Manufacturer. Confidential

Chemical. (G) Functionalized acrylate methacrylate polymer.

Use/Production. (G) Industrially used coating composition having a dispersive use. Prod. Range: 100,000 to 600,000 kg/yr.

P 88-5

Manufacturer. Confidential.

Chemical. (G) Substituted alkylsilylurea.

Use/Import. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-6

Importer. Wacker Chemicals (USA), Incorporated.

Chemical. (G) Mixture of 6-octen-3-ol and 4.7-dimethyl-4-ethenyl-.

Use/Import. (S) Industrial, commercial and consumer fragrance. Import range: 1,000 kg/yr.

Toxicity Data. Acute oral: 7.1 ml/kg; Irritation: Skin-Non-irritant, Eye-Irritant; Skin sensitization: Non-sensitizer.

P 88-7

Manufacturer. Confidential

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial alkyd resin for use in fire retardant coatings. Prod. range: 41,000 to 82,000 kg/yr.

P 88-8

Manufacturer. Confidential

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial alkyd resin for use in fire retardant coatings. Prod. range: 44,000 to 65,000 kg/yr.

P 88-9

Manufacturer. Confidential

Chemical. (G) Anhydride modified polyolefin.

Use/Production. (G) Industrially used coating with a dispersive use. Prod. range: 165,000 to 818,000 kg/yr.

P 88-10

Manufacturer. Confidential

Chemical. (G) Anhydride modified polyolefin.

Use/Production. (G) Industrially used coating with a dispersive use. Prod. range: 165,000 to 818,000 kg/yr.

P 88-11

Manufacturer. Confidential

Chemical. (G) Anhydride modified polyolefin.

Use/Production. (G) Industrially used coating with a dispersive use. Prod. range: 165,000 to 818,000 kg/yr.

P 88-12

Importer. Stockhausen Incorporated.

Chemical. (G) DIMAPA, polymer with acrylic acid, sodium salt; dialkylaminoalklacrylamide.

Use/Import. (S) Commercial production of filler and pigment slurries and of coatings for paper production. Import range: Confidential.

P 88-13

Manufacturer. GAF Chemicals Corporation.

Chemical. (G) N-substituted alkyl lactam.

Use/Production. (G) Reaction intermediate: Prod. range: Confidential.

P 88-14

Manufacturer. Confidential

Chemical. (G) Substituted benzotriazole.

Use/Production. (G) Industrial fuel and lube additive. Prod. range: 90,500 to 500,000 kg/yr.

P 88-15

Manufacturer. Confidential

Chemical. (G) Disubstituted triazinylamino substituted naphthalene disulfonic acid, sodium salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-16

Manufacturer. Confidential.

Chemical. (G) Disubstituted triazinylamino substituted phenyl substituted naphthalene disulfonic acid, sodium salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-17

Manufacturer. Confidential.

Chemical. (G) Disubstituted triazinylamino sulfophenylamino substituted carbopolycyclesulfonic acid.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-18

Manufacturer. Confidential.
Chemical. (G) Copper phthalocyanine substituted alkyl amino sulfonyl sulfo derivatives, sodium salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-19

Manufacturer. Confidential.
Chemical. (G) Disubstituted triazinylamino substituted naphthalene sulfonic acid, sodium salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-20

Manufacturer. Confidential.
Chemical. (G) Substituted aminophenyl substituted heteropolycycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-21

Manufacturer. Confidential.
Chemical. (G) Dialkylaminophenyl substituted heteromono cycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-22

Manufacturer. Confidential.
Chemical. (G) Substituted phenyl substituted heteropolycycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-23

Manufacturer. Confidential.
Chemical. (G) Substituted aminophenyl substituted heteromonocycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-24

Manufacturer. Confidential
Chemical. (G) Substituted aminophenyl substituted heteropolycycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-25

Manufacturer. Confidential.
Chemical. (G) Substituted aminophenyl substituted heteromonocycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-26

Manufacturer. Confidential.
Chemical. (G) Substituted heteropolycycle alkyl substituted heteropolycycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-27

Manufacturer. Confidential.
Chemical. (G) Substituted phenyl bis(substituted aminophenyl) methylium salt.
Use/Production. (G) Industrial open, non-dispersive use. Prod. range: Confidential.

P 88-28

Manufacturer. Confidential.
Chemical. (G) Substituted aminophenyl substituted heteropolycycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-29

Manufacturer. Confidential.
Chemical. (G) Disubstituted heteropolycycle, salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-30

Importer. Reichhold Chemicals, Incorporated.
Chemical. (G)Polyurethane.
Use/Import. (S) Industrial general laminating adhesives. Import range: Confidential.

P 88-31

Manufacturer. Confidential.
Chemical. (G) N,N-diethyl-N,N-di polyethylenoxy ammonium sulfate.
Use/Production. (G) Industrial open, non-dispersive use. Prod. range: Confidential.

P 88-32

Manufacturer. Fairmont Chemical Company.
Chemical. (G) Penaerythritol diphosphite.
Use/Production. (S) Antioxidant for thermoplastics. Prod. range: Confidential.

P 88-33

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic polymer.
Use/Production. (G) Performance additive for water based coating. Prod. range: 35,000 to 175,000 kg/yr.

P 88-34

Manufacturer. Confidential.
Chemical. (G) Acrylic high polymer.
Use/Production. (G) Industrial paint polymer. Prod. range: 8,000 to 100,000 kg/yr.

P 88-35

Manufacture. Confidential.
Chemical. (G) Tall oil acid alkyd resin.
Use/Production. (G) Industrial open, non-dispersive use. Prod. range: Confidential.

P 88-36

Manufacture. Confidential.
Chemical. (G) (Heterosubstituted siloxane)-(disubstituted siloxane) copolymer.
Use/Production. (G) A component of formulations for open, non-dispersive use. Prod. range: Confidential.

P 88-37

Importer. Nuodex Incorporated.
Chemical. (G) Selfcrosslinking, blocked polyurethane system.
Use/Import. (S) Industrial coatings. Import range: 15,000 to 100,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

P 88-38

Manufacture. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Binder for unlike substances. Prod. range: Confidential.

P 88-39

Importer. General Electric Corporation.
Chemical. (G) Substituted hydroxyphenyl benzotriazole carboxylic acid.
Use/Import. (S) Site-limited and industrial intermediate used in manufacture of UV light stabilizer composition. Import range: Confidential.

P 88-40

Importer. Confidential.
Chemical. (G) Fluro elastomer.
Use/Import. (G) Resin. Import range: Confidential.

P 88-41

Importer. Nuodex Incorporated.
Chemical. (G) Branched, saturated hydroxyl terminated polyester.
Use/Import. (S) Industrial coatings. Import range: 10,000 to 50,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

P 88-42

Manufacture. Confidential.

Chemical. (G) Fatty acids, tall oil, reaction products with diethylene triamine, alkoxylated.

Use/Production. (G) Additive used in the energy production industry. Prod. range: 10,000 to 30,000 kg/yr.

P 88-43

Importer. Alphagaz Specialty.

Chemical. (S) Disilicon hexahydride (disilane).

Use/Import. (S) Industrial feedstock to fabricate, amorphous silicon films, which have semiconductor properties. Import range: 100 to 1,000 kg/yr.

P 88-44

Importer. Confidential.

Chemical. (S) 4,4-Dimethyl-1,3-dioxolon-2-one.

Use/Import. (G) Hardener. Import range: Confidential.

P 88-45

Importer. Confidential.

Chemical. (G) Substituted imidazole.

Use/Import. (G) Epoxy resins. Import range: Confidential.

P 88-46

Manufacture. Confidential.

Chemical. (G) Polyurethane elastomer.

Use/Production. (G) Shielded, non-dispersive use in disposable garments. Prod. range: Confidential.

P 88-47

Importer. Nuodex Incorporated.

Chemical. (S) Reaction products from phosphorus pentoxide with isopropanol.

Use/Import. (S) Industrial cleansers for external walls, antistatic agents for the textile industry (emulsifiers) and wetting agents for strongly alkaline media. Import range: 10,000 to 20,000 kg/yr.

Toxicity Data. Acute oral: 940 mg/kg; Irritation: Skin—Slight irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 88-48

Manufacture. Texaco Chemical Company.

Chemical. (S) Disulfide, C_1-C_2 dialkyl, from C_1-C_4 hydrocarbon sweetening.

Use/Production. (S) Recovery of valuable sulfur compounds. Prod. range: 250,000 to 320,000 kg/yr.

Toxicity Data. Acute oral: 369 mg/kg; Irritation: Skin—Slight irritant.

P 88-49

Manufacturer. Confidential.

Chemical. (G) Alkylbenzene sulfonic acid, sodium salt.

Use/Production. (G) Oil soluble emulsifier. Prod. range: Confidential.

P 88-50

Manufacturer. Confidential.

Chemical. (G) Alkylbenzene sulfonic acid.

Use/Production. (G) An additive used in lubricating and cutting fluids. Prod. range: Confidential.

P 88-51

Importer. Dai Nippon Printing Company.

Chemical. (G) Indophenol derivative.

Use/Import. (S) Consumer dye for heat transfer recording material. Import range: 20 to 100 kg/yr.

P 88-52

Importer. Dai Nippon Printing Company.

Chemical. (G) Azomethine dye derivative.

Use/Import. (S) Consumer dye for transfer recording material. Import range: 20 to 100 kg/yr.

P 88-53

Importer. Dai Nippon Printing Company.

Chemical. (G) Indophenol derivative.

Use/Import. (S) Consumer dye heat transfer recording material. Import range: 20 to 100 kg/yr.

P 88-54

Importer. Dai Nippon Printing Company.

Chemical. (G) Azomethine dye derivative.

Use/Import. (S) Consumer dye for heat transfer recording material. Import range: 20 to 100 kg/yr.

P 88-55

Importer. Fritzsche Dodge and Olcott.

Chemical. (S) Cyclododecane, (1,1-dimethyethoxy).

Use/Import. (S) An aroma chemical or as a chemical intermediate. Import range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Irritant, Eye—Non-irritant.

P 88-56

Importer. Fritzsche Dodge and Olcott.

Chemical. (S) 2-Octen-1-o1, 3,7-dimethyl-.

Use/Import. (S) A chemical intermediate or as a aroma chemical. Import range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Irritant, Eye—Irritant.

P 88-57

Manufacturer. Confidential.

Chemical. (S) Adduct of maleated polypropylene and gamma aminopropyl triethoxy silane.

Use/Production. (S) Adhesion promoter in polypropylene fibers used in reinforcing portland cement articles. Prod. range: Confidential.

P 88-58

Importer. Biddle Sawyer Corporation.

Chemical. (G) Fiber reactive dye.

Use/Import. (S) Reactive dye for textiles. Import range: 40,000 to 40,000 kg/yr.

P 88-59

Importer. Confidential.

Chemical. (G) Fiber reactive dye.

Use/Import. (S) Reactive dye for textiles. Import range: 40,000 to 40,000 kg/yr.

P 88-60

Importer. Biddle Sawyer Corporation.

Chemical. (G) Fiber reactive dye.

Use/Import. (S) Reactive dye for textiles. Import range: 40,000 to 40,000 kg/yr.

P 88-61

Importer. Confidential.

Chemical. (G) Organopolysiloxane containing metals.

Use/Import. (S) Additive for silicone resin. Import range: 100 to 200 kg/yr.

Date: October 13, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-24577 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3280-8]

Science Advisory Board, Research Strategies Committee; Health Effects Group; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Health Effects Group of the Research Strategies Committee of the Science Advisory Board will be held on November 30,—December 1, 1987, in Conference Room 729G of the Humphrey Building, 200 Independance Avenue, SW., Washington, DC. The meeting will be conducted from 9:00 a.m., to 3 p.m.

The purpose of the meeting will be to continue the development of the research strategy for health effects research.

The meeting will be open to the public. Any member of the public wishing to attend the meeting must contact Dr. C. Richard Cothern, Executive Secretary to the Committee, by telephone at (202 282-2552 or by mail

to: Science Advisory Board (A101-F), 401 M Street SW., Washington, DC 20460 no later than C.O.B. November 21, 1987.

Date: October 14, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-24580 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3281-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

This notice announces the Availability of EPA comments prepared October 5, 1987 through October 9, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Final EISs

ERP No. F1-AFS-G65035-NM, Santa Fe National Forest, Land and Resource Management Plan, NM. SUMMARY: The final EIS adequately responded to EPA comments issued on the draft EIS.

F-UAF-A10055-00, Ground Wave Emergency Network (GWEN) Deployment and Land Acquisition, Final Operational Capability, US. SUMMARY: EPA made no formal comments. EPA had not additional comments on the final EIS.

Regulations

ERP No. R-FRC-A99178-00, 18 CFR Part 385, Procedures for the Assessment of Civil Penalties Under section 31 of the Federal Power Act (Docket No. RM87-24-000) (52 FR 29216). Summary: EPA has no obligations to the regulations as proposed. EPA recommends that a provision be made for consultation with other appropriate agencies when dealing with violations involving that other agency's mission.

ERP No. R-OSM-A0192-00, 30 CFR Parts 816 and 817, Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program, Revegetation (52 FR 28012). Summary: EPA expressed concern regarding repair of rills and gullies and reinstatement of the one-year rule for measuring revegetation success on some lands.

Dated: October 20, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-24661 Filed 10-22-87; 8:45 am]

BILLING CODE 6560-50-N

FEDERAL RESERVE SYSTEM

FGC Holding Co., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 12, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *FGC Holding Company,* Martin, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First Guaranty National Bank, Martin, Kentucky.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Albright Bancorp, Inc.,* Kingwood, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Albright National Bank of Kingwood, Kingwood, West Virginia.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Valley Bancshares, Inc.,* Grand Forks, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger of Valley Bank and Trust Company, Grand Forks, North Dakota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kanbank, Inc,* Overland Park, Kansas; to acquire 50.2 percent of the voting shares of Farmers State Bank of Walnut, Walnut, Kansas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sumitomo Bank, Limited,* Osaka, Japan; to maintain 13.7 percent interest in CPB, Inc., Honolulu, Hawaii, and thereby indirectly acquire Central Pacific Bank, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, October 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc 87-24520 Filed 10-22-87; 8:45 am]

BILLING CODE 6210-01-M

Independent Bancshares; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on

this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 1987.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Bancshares,* Abilene, Texas; to engage through its subsidiary, Independent Computers, Inc., Abilene, Texas, in joint venture with CCS Processing Services, Inc., Maitland, Florida, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24521 Filed 10-22-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Radiopharmaceutical Drugs Advisory Committee

Date, time, and place. November 16, 1987, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, November 16, 1987, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) A status report on the regulation of positron emission tomography (PET) and (2) brief reports of interest to the committee on activities of the Nuclear Regulatory Commission (NRC) and the Center for Devices and Radiological Health.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to two IND's: one a diagnostic agent and one a therapeutic agent. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to two IND's: one a diagnostic agent and one a therapeutic agent. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. November 17 and 18, 1987, 1 p.m., Building 13, conference room, National Center for Toxicological Research (NCTR), Jefferson, AR.

Type of meeting and contact person. Open committee discussion, November 17, 1987, 1 p.m. to 5 p.m.; open public hearing, November 18, 1987, 1 p.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; Ronald F. Coene, National Center for Toxicological Research, Food and Drug Administration, 5600 Fishers Lane, Rm 14-101, Rockville, MD 20857, 301-443-3155.

General function of the board. The Board advises the Director, NCTR, in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides the extra-agency review in ensuring that research programs at NCTR are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before November 1, 1987, and submit a brief statement of the general nature of the evidence or argument they wish to present, the name and address of proposed participants, and an indication of the approximate time requested to make their comments.

Agenda—Open Board discussion. The Board will receive an update of the Center's progress on research programs in extrapolation and program briefings on modulators of toxicology, clinical toxicology, and the biomarker program. A final agenda will be available on November 10, 1987, by contacting the executive secretary.

Agenda—Closed Board deliberations. The Board will review part of the intramural research program of the Center. This session of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with this research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Gastroenterology-Urology Devices Panel

Date, time, and place. November 18 and 19, 1987, 9 a.m., Rm. 503A, Hubert H. Humphrey Bldg., 200 Independence Avenue, SW., Washington, DC.

Type of meeting and contact person. Open public hearing, November 18, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation to data, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 4 p.m.; open committee discussion, November 19, 1987, 9 a.m. to 11 a.m.; closed presentation to data, 11:30 a.m. to 12 m.; open committee discussion, 1:30 p.m. to 3 p.m.; Frank S. Casciani, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the

committee. Those desiring to make formal presentations should notify the contact person before November 6, 1987, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss safety and effectiveness data for devices for extracorporeal shock wave lithotripsy.

Closed presentation of data. Trade secret and/or confidential commercial information will be presented to the committee regarding materials, design, computer software, and manufacturing information for the lithotripters. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dermatologic Drugs Advisory Committee

Date, time, and place. November 20, 1987, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contract person. Open public hearing, November 20, 1987, 9 a.m. to 10 a.m., unless public participation does not last that long; closed presentation of data, 10 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to IND 25-810, IND 25-782, and IND 29-951. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. November 23 and 24, 1987, 8:30 a.m., Building 31, Conference Rm. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, November 23, 1987, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 5 p.m.; closed committee deliberations, November 24, 1987, 8:30 a.m. to 12 m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biologcial products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Par 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm.4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy, investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 19, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–24525 Filed 10–22–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days to the Bureau Clearance Officer and to the Office of Management and Budget Interior Desk Officer at (202) 395–7340.

Title: Higher Education Annual Report, 25 U.S.C. 13, 25 CFR Part 40.

Abstract: The Office of Indian Education Programs needs and uses this information for program integrity while performing its misson of educating Native American Indian college students.

Bureau form number: No number.

Frequency: Annually.

Description of respondents: Tribal organizations who have contracted to administer operation of the Bureau's higher education programs.

Annual Response: 93.

Annual burden hours: 5,766 hours.

Bureau clearance officer: Cathie Martin (202) 343–3577.

Deputy to the Assistant Secretary/Director-Indian Affairs (Indian Education Programs).

Ronal D. Eden,

[FR Doc. 87–24615 Filed 10–22–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[OR–050–4410–10:GP7–296]

Availability of Draft Resource Management Plan and Environmental Impact Statement; Brothers/LaPine Planning Area, Prineville District, OR

October 15, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of the availability of the Draft Brothers/LaPine Resource Management Plan/Environmental Impact Statement (RMP/EIS) for 1.1 million acres of public land and federal subsurface mineral estate administered by BLM within Crook, Deschutes, Harney, Klamath and Lake counties in Central Oregon.

SUPPLEMENTARY INFORMATION: The issues and concerns addressed in the RMP/EIS are: land tenure and access, recreation, areas of critical environmental concern, wild horses and fire management in the entire planning area and livestock grazing, forestland management and wildlife habitat in the LaPine portion of the planning area.

The preferred alternative emphasizes the management, production and use of renewable resources on the majority of the public lands in the Brothers/LaPine Planning Area. Management would be directed toward providing a flow of renewable resources from the public lands on a sustained yield basis while protecting or enhancing natural values. Management under the preferred alternative would resolve the identified issues as follows:

(1) Timber harvest levels in LaPine would be approximately 8 million board feet annually for a period of approximately 7 years. This harvest would come from 1,000 to 1,400 acres with about 75 percent of the timber volume being high risk green timber and 25 percent being trees which have been killed by the Mountain Pine Beetle infestation. After the 7 year harvest period is completed, commercial timber harvesting on public lands in the LaPine portion would cease for approximately 50 years. Approximately 156,000 acres of woodlands in the Brothers portion would be managed for post, poles and firewood.

(2) Forage available for livestock grazing would increase to 16,569 AUMs in the LaPine portion. Up to 98 miles of fence and 14 waterholes could be developed if the livestock operators would be willing to assume development expense. Intensive grazing management systems would be implemented in all allotments.

(3) The 14 wild horses would be removed from the public lands and an additional 210 AUMs of forage previously consumed by those horses would be allocated to wildlife and watershed values.

(4) Wildlife habitat would be managed to provide optimum habitat diversity. Seventy percent of wildlife trees in the LaPine portion would be retained and the Oregon Department of Fish and Wildlife management objective numbers for deer and elk would be met.

(5) Aggressive fire suppression on 500,000 acres of public land in values-at-risk classes 4, 5 and 6 would continue. Approximately 600,000 acres would be

designated as conditional suppression or fire use acres.

(6) Off-road vehicle use would be limited on 267,076 acres with 10,722 acres being closed to off-road vehicle use. The remaining public lands in the planning area would be designated as open to ORV use. The Millican Valley Off-road Vehicle Area would be increased in size from 60,000 to 65,000 acres and continue as a designated ORV use area.

A total of 6 moderate and high quality rockhounding areas totalling 47,180 acres would be managed for public recreational rockhounding. A 13,000 acre area within the Congleton Hollow/Liggett Table Area would be proposed for withdrawal from mineral entry for semi-precious stones.

(7) A total of 36,916 acres would be designated as areas of critical environmental concern. They include the Badlands area, Benjamin, Forest Creeks, Horse Ridge, Logan Butte, Lower Crooked River, North Fork of the Crooked River, Pack's Milkvitch, Powell Butte, South Fork of the Crooked River, three segments of a historic wagon road and two bald eagle winter roost sites. Three of these areas totalling 1,565 acres would also be designated as research natural areas.

(8) Public land holdings in areas with high or moderate public values would be maintained or increased. Lands with low public values would be exchanged or sold if they met certain criteria. Legal public access would be acquired into inaccessible public lands with high public value.

Agricultural use of public lands would be authorized if no significant conflict with other public values exist.

Public lands in the LaPine core area would be exchanged, leased or sold. Public lands near Bend, Redmond and Prineville would be transferred to local governments or exchanged as needed to accommodate community expansion.

(9) The public lands would remain open for exploration (including geophysical) and development of mineral resources and related rights-of-way. Fluid mineral leasing would continue with the entire federal reserved mineral estate and 750,467 acres of public land open to exploration and development subject to standard lease requirements. A no surface occupancy stipulation on 16,480 acres around Prineville Reservoir and seasonal restrictions on 44,580 acres of deer wintering areas, and 3,560 acres of sage grouse strutting grounds would continue. Restrictions to protect 300,000 acres of land that are visually sensitive or of high scenic quality would also be continued. Exceptions to the no-surface occupancy and visual restriction might be permitted if certain criteria could be met.

Five other alternatives are considered in addition to the preferred alternative, they are: emphasize commodity production and enhancement of economic benefits, emphasize commodity production while accommodating natural values, continue existing management (no action), emphasize natural values while accommodating commodity production, and emphasize natural values. A discussion of the affected environment is summarized and the environmental consequences occurring from the preferred alternative and each of the other alternatives are documented in the EIS.

Dates and Addresses: The public comment period will end January 15, 1988. Written comments may be submitted at any time during the comment period to the Prineville District Manager located at 185 E. Fourth Street, P.O. Box 550, Prineville, Oregon 97754.

Three informal public meetings have been scheduled to receive comments on the Draft RMP/EIS. They will be held at Prineville, Oregon, on November 2, 1987, at 7:00 pm at the Catholic Parish Hall; at Bend, Oregon, on November 4, 1987, at 7:00 pm at the Riverhouse Motor Inn and at LaPine on November 5, 1987, at 7:00 pm at the Community Center for individuals wishing to ask questions or to present comments.

All comments received during the comment period will be considered in preparation of the Proposed RMP/Final EIS.

FOR FURTHER INFORMATION CONTACT: Brian Cunninghame, Team Leader, Bureau of Land Management, Prineville District, telephone (503) 447-4115.

Dated: October 15, 1987.

James L. Hancock,

District Manager.

[FR Doc. 87-24546 Filed 10-22-87; 8:45 am]

BILLING CODE 4310-33-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Copper River Meridian, Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-49190-G has been received covering the following lands:

Copper River Meridian, Alaska

T. 3 S., R. 4 E.,
Sec. 13 SW¼NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from April 1, 1987, the date of terminaton, have been paid.

Having met all the requirements for reinstatement of lease AA-49190-G as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1987, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: October 16, 1987.

[FR Doc. 87-24564 Filed 10-22-87; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-940-08-4220-10; AR-032636]

Proposed Modification of Public Land Order No. 3305; Transfer of Jurisdiction in Maricopa County, AZ

Octobr 16, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Modification of Public Land Order No. 3305; Transfer of Jurisdiction; Maricopa County, Arizona.

SUMMARY: The U.S. Department of Justice has requested a modification of Public Land Order 3305 to formally change the use and benefitting agency of 86 acres from a fire arms training facility for the Federal Bureau of Investigation to a Federal corrections facility under the Bureau of Prisons. The land has been and remains closed to surface entry, mining, and mineral leasing.

DATE: Comments should be received by January 21, 1988.

FOR FURTHER INFORMATION CONTACT: John T. Mezes, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone Number (602) 241-5531.

SUPPLEMENTARY INFORMATION: The Department of Justice proposes to modify the withdrawal made by Public Land Order 3305 of January 13, 1964, which withdrew the following described land from all forms of appropriation under the public land laws, including the mining and mineral leasing laws:

Gila and Salt River Meridian, Arizona

T. 6 N., R 2 E.,
Sec. 28, S½NW¼, N½SW¼.

The area described aggregates 160 acres in Maricopa County.

On January 22, 1986, the original 160 acre parcel was divided with approximately 74 acres being transferred to the Bureau of Prisons for the construction of a Federal Correctional Institution. The remaining 86 acres are now needed for a Federal correction facility adjacent to the existing correctional institution. The Federal Bureau of Prisons and the Federal Bureau of Investigation, both agencies within the Department of Justice, concur in this proposal. No change is proposed in the segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed modification of use and transfer of jurisdiction may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-24563 Filed 10-22-87; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

Draft Environmental Impact Statement and Development Concept Plan, Fishing Bridge Developed Area, Yellowstone National Park, Wyoming-Montana-Idaho

AGENCY: National Park Service, Interior.

ACTION: Availability of draft environmental impact statement and development concept plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and Development Concept Plan (DEIS/DCP) for the Fishing Bridge developed area in Yellowstone National Park, Wyoming-Montana-Idaho.

DATE: The DEIS/DCP will remain available for public comment through December 16, 1987. If any public meetings are held concerning the DEIS/DCP, they will be announced at a later date.

ADDRESSES: Comments on the DEIS/DCP should be sent to the Superintendent, Yellowstone National Park, P.O. box 168, Yellowstone National Park, Wyoming 82190. Public reading copies of the DEIS/DCP will be available for review at the following locations:

Office of the Superintendent, Yellowstone National Park, Wyoming, Telephone: (307) 344-7381

Branch of Compliance, Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, Lakewood, Colorado 80215, Mailing Address: P.O. Box 25287, Telephone (303) 969-2828

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 343-6843

SUPPLEMENTARY INFORMATION:

The DEIS/DCP analyzes six alternatives to reduce conflicts between the threatened grizzly bears and humans at the Fishing Bridge developed area in Yellowstone National Park. The alternatives attempt to contribute to the grizzly bear recovery effort while still providing appropriate visitor services. The DEIS/DCP evaluates the impacts of removing some or all of the camping and commercial support facilities at Fishing Bridge. The alternatives are: Alternative A to remove and replace elsewhere only the NPS campground, keeping the RV park and most support facilities; Alternative B to remove and replace all camping facilities and some support facilities; Alternative C to remove all camping and support facilities, and replace part of them; Alternative D to remove and replace 160 NPS campsites, fence the remaining campsites and retain all support facilites; Alternative E to remove all camping and support facilities without replacement elsewhere; and lastly, No Action. Alternative A is the proposed action. The DEIS/DCP in particular evaluates the environmental consequences of the proposed action and the other alternatives on threatened and endangered species, other natural resources and values, visitor use, concessioners, and communities near Yellowstone National Park.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Iobst at Yellowstone National Park at the above address, telephone (307) 344-7381; or Mr. Howie Thompson, Denver Service Center, Central Team, National Park Service at the above address, telephone (303) 969-2310.

Dated: September 23, 1987.

L. Lorraine Mintzmyer,

Regional Director, National Park Service.

[FR Doc. 87-24552 Filed 10-22-87; 8:45 am]

BILLING CODE 4310-70-M

Acadia National Park, Bar Harbor, ME, Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 section 10), that a meeting of the Acadia National Park Advisory Commission will be held Friday, November 13, 1987.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Town Office Building, Sea Street, Northeast Harbor, Maine. Subcommittees to consider nominating officers, establishing bylaws, and reviewing land protection guidelines will begin at 10 a.m. The full Commission will meet at 1:00 p.m. to consider the following agenda:

1. Election of Officers
2. Adoption of Bylaws
3. Review of Land Protection Plan
4. Public Comments
5. Proposed agenda and date of next Commission meeting.

Subcommittee meetings and the full Commission meeting are open to the public.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, Box 177, Bar Harbor, ME 04609.

Herbert Cables,

Regional Director.

Date: October 16, 1987.

[FR Doc. 87-24553 Filed 10-22-87; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore; South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 section 10), that a metting of the Cape Cod National Seashore Advisory

Commission will be held Friday, November 13, 1987.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission will conduct a field trip beginning at Park Headquarters, South Wellfleet, Massachusetts at 10 a.m. to visit North Truro Air Force Station and proposed bicycle trails in Truro and Wellfleet. The field trip is open to the public, however no transportation will be provided and anyone wishing to accompany the Commission must provide their own transportation.

The meeting convene at Park Headquarters at 2:00 p.m. to consider: 1) Rules of Governance, 2) Work Program, and 3) Historic Preservation.

The meeting is open to the public. It is expected that as many as 50 persons will be able to attend the 2 p.m. session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Herbert S. Cables, Jr.,

Regional Director.

Date: October 16, 1987.

[FR Doc. 87-24554 Filed 10-22-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation and address of principal office: Burlington Holdings, Inc., c/o Morgan Stanley & Co., Incorporated, 1251 Avenue of the Americas, New York, NY 10020.

2. Directly or indirectly wholly owned subsidiaries which will participate in the operation, address of its principal offices, and state and country of incorporation:

A. Burlington Industies, Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 27420, Incorporated in the State of Delaware

B. B. I. Transportion, Inc., Tucker Street Extension, P.O. Box 691, Burlington, NC 27216-0691, Incorporated in the State of Delaware

C. Burlington Fabrics Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 27420, Incorporated in the State of Delaware

D. Burlington Fabrics I Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 27420, Incorporated in the State of Delaware

E. Burlington Canada Inc., 205 Bouchard Boulevard, Dorvale, Quebec H9S 1A9, Incorporated in Canada

F. Textile Morelos, S.A. de C.V. San Juan del Aguila No. 401, Cuetnazaca, Motelos, Mexico, Incorporated in Mexico

G. Noblis-Lees, S.A., de C.V., Calzada Ermita-Ixtapalapa, No. 401 Local "C", Colonial Unidad Modelo, Mexico 13 D.F. Mexico, Incorporated in Mexico

H. C.H. Masland & Sons, Spring Road 1 Box 40, Carlisle, PA 17013, Incorporated in the State of Pennsylvania

I. Georgia Commercial Carpets, Inc., 444 North Hamilton Street, P.O. Box 13, Dalton, GA 30720, Incorporated in the State of Delaware

B. 1. Parent corporation and address of principal office: Harvard Industries, Inc., Central Avenue, Farmingdale, NJ 07727.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and state(s) of incorporation:

(i) Harvard Interiors Manufacturing Co., DE
(ii) Anchor Swan, DE
(iii) Elastic Stop Nut, DE
(iv) Trim Trends, Inc., MI
(v) Auto Anodics, Inc., MI
(vi) Birmingham Benders Co., Mi
(vii) Deckerville Die Co., MI
(viii) Snover Stamping Co., MI
(ix) Trim Trends Canada Limited, Ontario, CD
(x) Hayes-Albion Corporation, MI
(xi) The Kingston-Warren Corporation, NH
(xii) Harman Automotive, Inc., MI
(xiii) Harman Automotive-Puerto Rico, Inc., DE
(xiv) ESNA Fasteners, Inc., Quebec, CD
(xv) Hayes-Albion Transportation Corporation, MI

Noreta R. McGee,

Secretary.

[FR Doc. 87-24566 Filed 10-22-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18724]

Burlington Northern, Inc. and Burlington Northern Motor Carriers, Inc.; Control of Victory Freightway System, Inc., Monkem Co. Inc., Monroe Trucking, Inc., Stoops Express, Inc., Wingate Trucking Co., Inc., and Taylor-Maid Transportation, Inc.; Notice of Intent

On September 25, 1987, pursuant to 49 CFR 1180.4(b), Burlington Northern, Inc. (BNI) and Burlington Northern Motor Carriers, Inc. (BNMC) have notified the Commission of their intent to file an application seeking Commission approval for acquisition of control by BNI, through its wholly-owned non-carrier subsidary BNMC, of the following Class I motor carriers: Victory Freightway System, Inc. (Victory), Monkem Company, Inc. (Monkem), Monroe Trucking, Inc. (Monroe), Stoops Express, (Stoops), Wingate Trucking Company, Inc. (Wingate), and Taylor-Maid Transportation, Inc. (Taylor-Maid).

BNI is a non-carrier holding company which also owns Burlington Northern Railroad Company (BNRR), a Class I railroad. Victory holds irregular-route common carrier authority in MC-149308 and contract authority in MC-142062. Monkem holds nationwide general commodity authority in MC-119493 (Sub-No. 402) and contract carrier authority in MC-119493 (Sub-No. 7). Monroe holds nationwide contract carrier authority in MC-154621. Stoops holds common carrier authority in MC-144630 (Sub-No. 70) and contract carrier authority in MC-144630 (Sub-No. 74) to transport general commodities nationwide. Wingate holds nationwide general commodity contract carrier authority in MC-124154 (Sub-No. 115) and common carrier authority in MC-124154 (Sub-No. 108) to transport general commodities between points in and east of Minnesota, Iowa, Missouri, Arkansas and Texas, on the one hand, and, on the other, points in the United States. Taylor-Maid holds nationwide authority to transport general commodities as a common carrier in MC-152180 (Sub-No. 8) and as a

[1] For administrative convenience, we have redocketed this matter. It addresses subsequent developmenmts in the matters formerly docketed in No. MC-F-16248, Burlington Northern, Inc.—Control Exemption—Victory Freightway System, Inc.; No. MC-F-16372, Burlington Northern, Inc.—Control Exemption—Monkem Company, Inc.; No. MC-F-16452, Burlington Northern, Inc.—Control Exemption—Monroe Trucking, Inc.; and No. MC-F-17030, Burlington Northern, Inc. and Burlington Northern Motor Carriers, Inc.—Control Exemption—Stoops Express, Inc., Wingate Trucking Company, Inc., and Taylor-Maid Transportation, Inc.

contract carrier in MC-152180 (Sub-No. 7).

BNI and BNMC filed petitions for exemption of their proposed acquisition of Victory on April 15, 1985; of Monkem on May 21, 1985; of Monroe on June 20, 1985; and of Stoops, Wingate, and Taylor-Maid on January 10, 1986. Notices of the proposed exemptions were published in the **Federal Register** on April 22, 1985 (Victory); July 2, 1985 (Monkem); July 3, 1985 (Monroe), and January 22, 1986 (Stoops, Wingate, and Taylor-Maid), in accordance with the procedural guidelines established in *Procedures—Handling Exemptions Filed by Motor Carriers, 367* 367 I.C.C. 113 (1982). A number of persons filed comments. In decisions served July 26, 1985 in No. MC-F-16248, February 13, 1986 in Nos. MC-F-16372 and 16452, and July 28, 1986 in Nos. MC-F-17030, the Commission granted the exemption petitions. However, on June 23, 1987, the United States Court of Appeals for the District of Columbia Circuit reversed the agency's exemption decisions. In *Regular Common Carrier Conf.* v. *United States*, 820 F.2d 323 (D.C. Cir., June 23, 1987), the court held that these rail-motor carrier acquisition transactions may not be exempted under section 11343(e).

The Commission, by decision served August 5, 1987, directed BNI and BNMC to advise it whether and how they wished to proceed in light of the court decision. By letter filed September 25, 1987, applicants requested, in a notice of intent, that the proceedings be processed as a formal application under 49 U.S.C. 11344.[2] By decision served October 23, 1987, the Commission granted the request.

The Commission's regulations at 49 CFR Part 1180, Subpart A do not specifically apply to intermodal transactions involving the acquisition of motor carriers by railroads or rail affiliates. Nevertheless, the Commission has previously found these regulations, subject to appropriate modification, to be a suitable procedural means of processing such transactions. *See* Finance Docket No. 31000, *Union Pacific Corporation and BTMC Corporation—Control—Overnite Transportation Company* (Notice of Intent published at 51 FR 37666, October 23, 1986).

Pursuant to 49 CFR 1180.4(b)(1), applicants state that they intend to file an application within 120 days of the filing date of the notice of intent. We find, under 49 CFR 1180.4(b)(2), that the proposed acquisition is a minor transaction that does not involve a matter of regional or national transportation importance. Accordingly, applicants need not furnish market impact analyses required under 49 CFR 1180.7 for major or significant transactions. We find that the transaction should be processed under the procedural requirements at 49 U.S.C. 11345(d) and be considered under the substantive decisional standards at 49 U.S.C. 11344(c) and (d). The prior records (in the exemption proceedings) will be incorporated into the record made in this proceeding. Applicants must comply with the informational requirements of 49 CFR Part 1180, Subpart A, relating to minor transactions, subject to such modifications as may be ordered by the Commission in response to appropriate requests or on our own motion. An order calling for submission of additional information on specific issues may be issued subsequent to the publication of this notice and accompanying decision.

Dated: October 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24565 Filed 10-22-87; 8:45am]

BILING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 204X)

Chicago and North Western Transportation Co.; Exemption for Abandonment of Railroad Line in Blackhawk County, IA

Chicago and North Western Transportation Company has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.5 mile line of railroad between milepost 324 near Waterloo, IA, and milepost 317.5 near Cedar Falls Jct., IA, all in Blackhawk County, IA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 22, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by November 2, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 12, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 8, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24222 Filed 10-22-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31096]

Terre Haute, Brazil & Eastern Railroad; Acquisition and Operation Exemption; Certain Lines of Consolidated Rail Corp.

The notice of exemption published at 52 FR 33303 (September 2, 1987) indicated that the Terre Haute, Brazil & Eastern Railroad (THB&E) had filed notice of exemption to acquire and operate certain properties of Consolidated Rail Corporation (Conrail). The notice of exemption incorrectly designated the eastern milepost as milepost 30.3, whereas the eastern milepost is actually milepost 40.3. The notice of exemption should be corrected to reflect that the property being acquired and operted consists of Conrail's former Limedale Secondary

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2 Applicants simultaneously filed an application under 49 U.S.C. 11349 seeking temporary authority for BNI's continuing control of BNMC and its motor carriers. By decision served October 8, 1987 (corrected October 13, 1987), the Commission authorized BNI to assume temporary control of the motor carriers, subject to two conditions, until February 22, 1988 in the event a permanent application is not filed, or until final disposition of the permanent application.

trackage located between milepost 40.3 (EOT) and milepoost 68.7, its East Yard between the western end of the Limedale Secondary (milepost 68.7) and a point appoximately 500 feet west of Twenty Fifty Street (milepost 71.5), and its East Yard Running Track between milepost 71.5 and milepost 73.0 (EOT).

Decided: October 5, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24223 Filed 10-22-87; 8:45 am]

BILLING CODE 7035-01-M

Senior Executive Service Performance Review Board; Membership Change

October 20, 1987.

The purpose of this Notice is to designate a change in the membership of the ICC Senior Executive Service Performance Review Board (PRB).

Richard H. Klem, Director, Office of Transportation Analysis, has been appointed as an alternate member of the Performance Review Board; Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24633 Filed 10-22-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings

The regular Fall meetings of committees of the Labor Research Advisory Council will be held on November 17, 18, and 24. The meetings will be held in Room S-2217 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, November 17, Room S-2217

9:30 a.m.—Committee on Employment Structure and Trends

1. 1990 Census Issues
   a. Discussion of labor force questions
   b. Effect of undercount adjustment on labor force
   c. Post-1990 Current Population Survey Redesign Strategy
2. Status of plant closing report
3. Need for metropolitan area data in the Current Employment Survey Program
4. Discussion of proposal to revise Local Area Unemployment Statistics (LAUS) methodology

1:30 p.m.—Committee on Prices and Living Conditions

1. Consumer Price Index
   a. Rebasing to 1982-84
   b. New data collection technology
   c. CPI for elderly
   d. Other
2. Status Report
   a. Producer price index
   b. Consumer Expenditure Surveys
   c. International Price Indexes
3. Other business

Wednesday, November 18, Room S-2217

9:30 a.m.—Committee on Wages and Industrial Relations

1. Review of work in progress
2. Review of wages and industrial relations 1988 budget
3. Temporary Help Survey update
4. Progress on the White-Collar Pay and Benefits Survey and the Professional, Administrative, Technical and Clerical Pay Survey
5. Introduction of Cost Level Data from the Employment Cost Index
6. Chairman's summary of the joint BRAC and LRAC subcomittee
7. Other business

1:30 p.m.—Committee on Productivity, Technology and Growth

1. Review of Projections 2000
2. Discussion of Defense expenditures employment implications
3. A report on work in progress on why producer service industries are growing

Tuesday, November 24, Room S-2217

1:30 p.m.—Committee on Occupational Safety and Health Statistics

1. 1986 Annual Survey results
2. Reporting of the Committee on National Statistics; National Academy of Sciences
3. Keystone Recordkeeping Project
4. On-site Records Check Pilot Project
5. Work Injury Reports—Inhalation Study
6. Supplementary Data System (SDS) update
7. Illness.

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-1327.

Signed at Washington, DC, this 16th day of October 1987.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 87-24639 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-9,990, et al.]

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Armstrong Tire Co., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 28, 1987-October 2, 1987 & October 5, 1987-October 9, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,990; Armstrong Tire Co., Des Moines, IA

TA-W-19,952; Diamant Boart USA, Inc., Conroe, TX

TA-W-20,030; Colt Industries, Inc., Holley Automotive Div., Paris, TN

TA-W-19,978; Gates Molded Products Co., Milby Street Plant, Houston, TX

TA-W-19,987; Ames Oil & Gas Corp., Pawnee, OK

TA-W-19,988; Ames Oil and Gas Corp., Houston, TX

TA-W-19,972; Baker Metals Products, Dallas, TX

TA-W-19,968; General Motors Corp., AC Spark Plug Div., Oak Creek, WI

TA-W-20,016; Lordstown Rubber Co., Warren, OH

TA-W-20,022; RSI Fabtec, Zeeland, MI

TA-W-20,004; Dee Jay, Paterson, NJ

TA-W-19,998; Phoenix Abrasive & Manufacturing, Inc., Jamaica, NY

TA-W-19,668; Detroit Gasket (Currently D.G. Trim), Marine City, MI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-19,969; AT&T Information Systems, Solon, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,929; General Motors Corp., CPC Pontiac, Pontiac, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,090; Control Data Corp., Hampton, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,011; Goodyear Tech Center, Goodyear Tire & Rubber Co., Akron, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,982; Motorola, Microprocessor Products Group, Oak Hil Plant, Austin, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-19,930; General Motors Corp., Truck & Bus Div., Pontiac, MI

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-20,013; Integrated Electronics, Wharton, NJ

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-19,976; Cyprus Thompson Creek Mining Co., Clayton, ID

A certification was issued covering all workers separations of the firm separated on or afer July 27, 1986.

TA-W-20,028; Dee Cee Apparel, Hohenwald, TN

A certification was issued covering all workers of the firm separated on or after August 11, 1986.

TA-W-20,094; Storage Technology Corp., Shawnee Mission, KS

A certification was issued covering all workers of the firm separated on or after September 9, 1986.

TA-W-20,041; Alzara Dress, New York, NY

A certification was issued covering all workers of the firm separated on or after August 18, 1986 and before January 31, 1987.

TA-W-20,034; Switches, Inc., Leiters Ford, IN

A certification was issued covering all workers of the firm separated on or after August 14, 1986.

TA-W-20,020; Placid Oil Co., Denver District Office, Denver, CO

A certification was issued covering all workers of the firm separated on or after August 4, 1986.

TA-W-20,029; Grace Shoe Manufacturing Co., Inc., Somerworth, NH

A certification was issued covering all workers of the firm separated on or after August 6, 1986 and before October 30, 1987.

TA-W-19,974; Bofors Nobel, Inc., Muskegon, MI

A certification was issued covering all workers of the firm separated on or after July 21, 1986.

TA-W-19,974A; Environmental Systems Corp., of Michigan Muskegon, MI

A certification was issued covering all workers of the firm separated on or after July 21, 1986.

TA-W-20,043; Coleman Products Co., Coleman, WI

A certification was issued covering all workers of the firm separated on or after August 20, 1986.

TA-W-19,992; Bryant Electric, A Div. of Westinghouse Electric, A Div. of Westinghouse Electric Corp. Bridgeport, CT

A certification was issued covering all workers of the firm separated on or after March 1, 1986.

TA-W-19,980; Lamson/Crocker Petroleum Corp., Lafayette, LA

A certification was issued covering all workers of the firm separated on or after July 10, 1986 and after March 31, 1987.

TA-W-19,997; George Seelman & Sons Co., Milwaukee, WI

A certification was issued covering all workers of the firm separated on or after July 29, 1986.

TA-W-19,985; Teledyne Contrinental Motors, Industrial Products Div., General Products Div., Muskegon, MI

A certification was issued covering all workers of the firm separated on or after July 27, 1986.

TA-W-19,996; General Motors Corp., Terre Haute, IN

A certification was issued covering all workers of the firm separated on or after July 29, 1986.

TA-W-19,971; American Lacquer, Miami, FL

A certification was issued covering all workers of the firm separated on or after July 27, 1986 and before August 22, 1987.

I hereby certify that the aforementioned determinations were issued during September 28, 1987–October 2, 1987 and October 5, 1987–October 9, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: October 13, 1987.

[FR Doc. 87-24634 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; AT&T Information Systems, et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 2, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 2, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 13th day of October 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Information Systems (workers)	Shreveport, LA	10/13/87	9/30/87	20.157	Telephone equipment.
Arvin North American Automotive (IAMAW)	Greenwood, IN	10/13/87	10/11/87	20.158	Auto parts.
Combustion Engineering, Inc. (USW)	Monongahela, PA	10/13/87	9/29/87	20.159	Iron.
El Paso Natural Gas Co. (workers)	Coyanosa, TX	10/13/87	9/28/87	20.160	Gas.
Facet Enterprise (workers)	Murfreesboro, NC	10/13/87	9/27/87	20.161	Pumps.
Friedrich Climate Master (IAMAW)	Utica,NY	10/13/87	9/29/87	20.162	Heat pumps.
G.W. Petroleum, Inc. (workers)	Denver, CO	10/13/87	9/28/87	20.163	Oil & gas.
Jeddo Highland Coal Co. (UMWA)	Shenandoah, PA	10/13/87	9/28/87	20.164	Coal.
Kaiser Aluminum & Chemical (USWA)	Baltimore, MD	10/13/87	9/28/87	20.165	Aluminum.
Kendall McGaw Laboratories, Inc. (workers)	Milledgeville, GA	10/13/87	9/26/87	20.166	Intravenous solutions.
MacGregor Sandknit (Action)	Fon du Lac, WI	10/13/87	9/30/87	20.167	Apparel.
MacMillan Petroleum Inc. (IUOE)	Norphlet, AR	10/13/87	9/28/87	20.168	Crude oil.
Minneapolis Elect Steel Castings, Co (IMAWU).	Minneapolis, MN	10/13/87	9/25/87	20.169	Steel.
Navistar International (USWA)	Waukeiha, WI	10/13/87	10/2/87	20.170	Vehicles.
Nor East Plastics (CWA)	Elmira, NY	10/13/87	9/29/87	20.171	Auto parts.
Sanyo Mfg. Co. (IUE)	Forrest City, AR	10/13/87	9/24/87	20.172	TV's.

[FR Doc. 87-24635 Filed 10-22-87; 8:45 am]
BILLING CODE 4510-30-W

[TA-W-19,824]

Caterpillar, Inc., Davenport, IA; Negative Determination Regarding Application for Reconsideration

By an application dated September 25, 1987, the United Auto Workers (UAW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Caterpillar, Incorporated, Davenport, Iowa. The denial notice was signed on August 12, 1987 and published in the **Federal Register** on August 25, 1987 (52 FR 32072).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that Caterpillar's activities at Davenport were one large interwoven operation and that when the production of track loader models (943, 953, 963, and 973) was shipped to France, the Davenport plant became under utilized. The union also claims that production on the wench assembly will be moved overseas to Caterpillar's licensee in Japan. Lastly, it is claimed that an additional amount of the components for the D-6 track-type tractor could have been produced at Davenport but that production was performed overseas.

According to the union, production at Davenport should have been viewed by the Department as one total package from 1985 through mid-1987. The union claims that the underutilization of the Davenport plant began with the transfer of track loader production to France in 1985. Worker separations resulting from this production transfer cannot be considered under the initial determination. Section 223(b)(1) of the Track Act of 1974 does not allow for the certification of workers laid off more than one year prior to the date of the petition, which in this case is June 4, 1987.

During the period applicable to the petition, workers at Davenport produced the D-6 tractor and the rubber-belted agricultural tractor. Production on the D-6 tractor and the agricultural tractor was transferred to company plants in Illinois effective October 1, 1987. A domestic transfer of production would not form basis for certification.

The union takes issue with the Department's increased D-6 tractor production findings at Davenport in 1986 compared to 1985 and in the first six months of 1987 compared to the same period in 1986. The union claims that D-6 tractor production increased because it was a new product and fill-in production to remove the void caused by the transfer of track loader production to France. The union claims that, in any event, worldwide sales of the D-6 tractor were down. The statements by the union that the product is new or its production is fill-in would not mitigate the finding that there was an increase in production at Davenport. Also, world-wide sales are not a criterion for certification. Domestic sales of the D-6 tractor increased in 1986 compared to 1985. All sales are made through exclusive dealerships. Company officials stated that the D-6 tractor and agricultural tractors are not like or directly competitive with the track loaders formerly produced at Davenport and now being imported from France.

Production on the wench assembly is currently being performed at Davenport in order to build lead time for its eventual transfer to Japan which is scheduled to occur in April 1988. Since the transfer of the wench assembly production has not occurred and there are no imports of the wench assembly, there is no basis for certification under the Trade Act.

The claim that additional components for the D-6 tractor could have been produced at Davenport is not applicable for the certification of component workers at Davenport since lost potential production of components would not form a basis for certification. Section 222(2) of the Trade Act states that sales or production must decrease absolutely.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this October 6, 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-24636 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,283]

Reltoc Manufacturing Co., Forrest City, AR; Negative Determination on Remand

Pursuant to the U.S. Court of International Trade remand dated August 3, 1987 in *Frances Stidham et. al. v. Secretary of Labor* (USCIT No. 84-12-01732) the Department is issuing a further determination.

The initial investigation findings show that Reltoc Manufacturing Company's plant in Forrest City, Arkansas produced men's casual slacks for Cotler in New York who distributed them to department and specialty stores through the United States. The Forrest City plant closed temporarily on July 30, 1983 and reopened on March 1, 1984 with an increasing monthly employment trend. The investigation found that imports did not contribute importantly to worker separations at the subject firm. Instead, the findings show that Reltoc's other domestic plants increased their production of men's slacks during the time of the Forrest City's plant closure. Reltoc did not import men's slacks nor use foreign contractors during the relevant period of the investigation. Reltoc's sole customer imported slack sets which included a pair of slacks and a jacket or to which are sold together as a set. Company officials indicated that the imported slacks incorporated into slack sets are not comparable to the type of slacks produced by Reltoc. Reltoc has never produced slack sets.

Additional findings on remand show that Reltoc's plants at Beaverton and Winfield produced the same type of men's casual slack as that produced at Forrest City. Approximately one-half of Forrest City's production in 1983 was absorbed by Reltoc's Beaverton and Winfield plants. Each of these plants increased their production of men's slacks in the last six months of 1983 compared to the first six months of 1983. The remaining half of Forrest City's production of men's slacks was contracted out to domestic contractors that did not import under U.S. Tariff Provision 807.00 or import from foreign companies. In 1983, Reltoc had increased production of men's slacks with its contractors and in-house facilities. A domestic transfer of production would not form a basis for a certification.

The Department conducted a secondary survey of Reltoc's sole customer, Cotler, who had increased sales of men's slacks. The survey showed that most of the respondents did not increase their reliance on imports in 1983 compared to 1982. Although one respondent indicated increased import purchases of men's slacks in 1983 this occurred at a time when Reltoc had increased sales production as described above.

Conclusion

After reconsideration on remand, I reaffirm the original denial of eligibility to apply for adjustment assistance for former workers of the Forrest City, Arkansas plant of the Reltoc Manufacturing Company.

Signed at Washington, DC, this 16th day of October 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-24637 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,108]

Trans-Buckeye Corp., Stuebenville, Oh; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 23, 1987 in response to a worker petition which was filed by the United Steelworkers of America on behalf of workers at Trans-Buckeye Corporation, Stuebenville, Ohio.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequenty, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of October 1987,

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-24638 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice Clear Creek, Elbert, Gilpin, Lake, Morgan, Park and Weld Counties, Colorado from General Wage Determination No. CO87-4 dated January 2, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations Part 1 (29 CFR), §1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT87-1 (January 2, 1987)..... pp. 70, 71. pp. 73, 76.
Massachusetts:
MA87-1 (January 2, 1987)..... p. 372. pp. 375-376.
New York:
NY87-1 (January 2, 1987)..... p. 682.
Pennsylvania:
PA87-1 (January 2, 1987)..... p. 847.
PA87-2 (January 2, 1987)..... p. 858.
PA87-3 (January 2, 1987)..... p. 868.
PA87-6 (January 2, 1987)..... pp. 898-899.
PA87-7 (January 2, 1987)..... pp. 906-907.
PA87-17 (January 2, 1987).... pp. 964-965.
PA87-18 (January 2, 1987).... pp. 970, 972.
PA87-22 (January 2, 1987).... pp. 994, 997.
PA87-24 (January 2, 1987).... pp. 1012-1013.
Tennessee:
TN87-3 (January 2, 1987)..... p. 1088.

Volume II

Illinois::
IL87-1 (January 2, 1987)..... pp. 68-69.
IL87-7 (January 2, 1987)..... p. 136.
IL87-9 (January 2, 1987)..... p. 149.
IL87-16 (January 2, 1987)..... p. 206.
IL87-17 (January 2, 1987)..... p. 216.
Oklahoma:
OK87-13 (January 2, 1987) ... p. 899.
OK87-14 (January 2, 1987) ... pp. 903-904.
OK87-16 (January 2, 1987) ... p. 912b.
OK87-17 (January 2, 1987) ... p. 912f.
OK87-18 (January 2, 1987) ... p. 912h.
OK87-19 (January 2, 1987) ... p. 912l.
OK87-20 (January 2, 1987) ... p. 912n.
Texas:
TX87-10 (January 2, 1987).... p. 947.

Volume III

California:
CA87-1 (January 2, 1987)..... pp. 36-44.
CA87-2 (January 2, 1987)..... pp. 46, 48-62d.
CA87-4 (January 2, 1987)..... pp. 68, 73, 76, 78-79, 85-86.
Colorado:
CO87-4 (January 2, 1987)..... pp. 117-124.
Hawaii:
HI87-1 (January 2, 1987)..... p. 130.
Montana:
MT87-1 (January 2, 1987)..... pp. 167, 170, 172, 173-175, 177, 179.
Oregon:
OR87-1 (January 2, 1987)..... p. 281.
Listing by Location (index) pp. xxiv-xxv.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 16th Day of October 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-24361 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-188-C]

A. & D. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

A. & D. Coal Company, R.D. #1, Box 32-A, Dornsife, Pennsylvania 17823 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07540) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quicky and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main device. The hoisting would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 23, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: October 14, 1987.

[FR Doc. 87-24640 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket no. M-87-201-C]

Arch of Kentucky; Petition for Modification of Application of Mandatory Safety Standard

Arch of Kentucky, P.O. Box 787, Lynch, Kentucky 40855 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its High Splint No. 2 Mine (I.D. No. 15-16084), and its Owl No. 1 Mine (I.D. No. 15-16011), both located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The High Splint No. 2 and Owl No. 1 mines range from 42 to 60 inches in height, with ascending and descending grades.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the canopies could dislodge roof supports and entrap the equipment. The canopies would also decrease the equipment operator's visibility and increase discomfort, increasing the chances for an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard Arlington, Virginia, 22203. All comments must be postmarked or received in that office on or before November 23, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: October 14, 1987

[FR Doc. 87-24641 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-200-C]

Keno Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Keno Coal Company, 1433 Poplar Street, Kulpmont, Pennsylvania 17834 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-02257) located in Columbia County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard Arlington, Virginia, 22203. All comments must be postmarked or received in that office on or before November 23, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: October 14, 1987.

[FR Doc. 87-24642 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-193-C]

Pontiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Pontiki Coal Corporation, Caller No. 801, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Pontiki No. 1 Mine (I.D. No. 15-08413), and its Pontiki No. 2 Mine (I.D. 15-09571), both located in Martin County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mines' coal heights are inconsistent and range from 36 to 72 inches with numerous dips and grades.

3. Petitioner states that the use of cabs or canopies on each mine's electric face equipment would result in a dimunition of safety to the miners affected because the cabs or canopies would limit the equipment operator's visibility, could contact hung energized power cables, and cause cramped conditions for the operators, causing them to hang out of the equipment, increasing their chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 23, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: October 14, 1987.

[FR Doc. 87-24643 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (26 U.S.C. 656) will meet on November 3, 1987 at the U.S. Grant Hotel, 326 Broadway, San Diego, California, 92101 (telephone number 619-232-3121). The meeting will continue on November 4 if necessary. The meeting is open to the public and will start at 9:00 am.

Agenda items will include a discussion of possible additions to the Crane or Derrick Suspended Personnel Platforms final rule, revisions to the Proposed Rule on Concrete and Masonry concerning lift slab construction, the proposed rule on methylenedianiline, an update on the Bridgeport, Connecticut accident, and other construction issues. Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3670, Third Street and Constitution Avenue NW., Washington, DC, 20210. Telephone: 202-523-8615.

The official record of the meeting will be available for public inspection and copying at the OSHA Docket Office, Room N-3647, Frances Perkins Building, Third Street and Constitution Avenue NW., Washington, DC, 20210. Telephone 202-523-7894.

Signed at Washington, DC this 20th day of October, 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87-24602 Filed 10-20-87; 3:56 pm]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-6908 et al.]

Proposed Exemptions; Children's Clinic Profit Sharing Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

Th applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Children's Clinic Profit Sharing Trust (the Plan) Located in St. Louis, MO

[Application No. D-6908]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in

accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan of $100,000 by the Plan to Baby Docs, Ltd. (Baby Docs), a party in interest with respect to the Plan, provided that the terms and conditions of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party on the date the loan is consummated.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 10 participants and net assets of approximately $917,790 as of July 27, 1987. The Plan's trustee is the Boatman's National Bank of St. Louis (the Trustee). The Employer which established the Plan is Lonsway, Peterson, Plax, Wool, Inc. The Employer is a Missouri corporation, the professional employees of which engage in the practice of pediatric medicine. The stock of the Employer is owned by Drs. Lonsway, Peterson, Plax and Wool.

2. Two of the principals of the Employer, Maurice J. Lonsway, Jr., M.D. and Fredrick Peterson, M.D. are owners of a corporation, M & F Investment Company (M & F). On April 30, 1965, M & F purchased property located at 8025 Dale Avenue, St. Louis, Missouri (the Property) which it leases to the Employer for the conduct of its business. Dr. Lonsway decided that he no longer wished to have an ownership interest in the Property and as a result, M & F put the Property up for sale. The remaining physician employees of the Employer did not favor a sale of the Property to an outside party. Any such sale would have jeopardized the Employer's right to continued use of the Property and could have resulted in significant increases in the rental cost of the Property. Accordingly, Drs. Peterson, Plax, Wool and Kreusser (being all of the physician employees of the Employer other than Dr. Lonsway) formed a Missouri corporation, Baby Docs, for the purpose of purchasing the Property. On June 16, 1986, Baby Docs purchased the Property from M & F for a purchase price of $125,000. Baby Docs paid M & F $25,000 (representing 20% of the total purchase price) in cash at the time of the closing. The remaining $100,000 was borrowed from the Plan. The fair market value of the Property on June 16, 1986 was determined by Ted Horowitz (Mr. Horowitz), ASA, an independent real estate appraiser with the firm of Atlas Realty Co., University City, Missouri, to be $140,000.

3. The applicant recognizes that the loan between the Plan and Baby Docs was a prohibited transaction under the Act. Accordingly, the applicant has agreed to correct the prior prohibited transaction by repaying the outstanding balance of the loan to the Plan, including accrued interest and to pay any applicable excise taxes due to the Internal Revenue Service.

4. The applicant now requests an exemption for a new loan of $100,000 (the Loan) between the parties. Interest on the Loan initially will accrue at the rate of 10¼% per annum and the Loan will have a 20 year term. The principal and interest shall be payable in 240 consecutive monthly payments of $981.64, however, this amount may change as the interest rate is adjusted. The interest rate will be adjusted annually to the then prevailing rate charged by the commercial real estate lending division of the Trustee, subject to the Trustee's determination of the reasonableness and adequacy of such rate. The foregoing terms and conditions are comparable to those currently used by the commercial real estate lending division of the Trustee.

5. The Loan will be secured by the Property and by accounts receivable of the Employer in the amount of $50,000. The Employer's turnaround time for its accounts receivable is approximately 1½ months and the Employer's bad debts amount to about 4½% of accounts receivable. Total accounts receivable as of April 30, 1987 were $139,856 and no outstanding pledges of the accounts receivable currently exist.

6. The Employer will warrant to own throughout the term of the Loan all collateral free from adverse claims, security interests or encumbrances. In the event the value of the collateral (valuing accounts receivable at 50% of its dollar value) falls below 150% of the outstanding principal balance of the Loan, the principal balance of the Loan will be paid down in an amount sufficient to make sure that the collateral used to secure the Loan will never be less than 150% of the outstanding principal balance of the Loan. An updated title policy will be obtained on the Property, a Deed of Release will be filed releasing the prior Deed of Trust given to the Plan, and Loan and security documents will be entered into to ensure that the Plan has a first security interest in the Property and the pledged accounts receivable.

The Employer will have the accounts receivable used as collateral for the Loan independently valued no less frequently than once a year to determine the value. The Employer or Baby Docs will bear all and any expense to have such valuation made. The employer or Baby Docs will incur all costs necessary to obtain and preserve the collateral, including but not limited to, the payment of all taxes, assessments and insurance premiums. Incident to the Loan, Baby Docs agrees to insure the collateral against damage by fire or other loss throughout the term of the Loan. The Plan will be named as loss payee to the extent of the first $100,000 in losses.

7. The Trustee has served and will continue to serve as the independent fiduciary of the Plan.[1] The Trustee represents that it has broad experience in administering pension and profit sharing plans and has general investment and management experience. At present, the Trustee manages in excess of $5 billion in assets of pension and profit sharing plans.

8. In determining that the Loan was favorable to the Plan, the Trustee considered the following factors: (a) The size, diversity and soundness of the Plan's existing account portfolio; (b) the cash flow needs of the Plan; (c) the strong professional reputation and integrity of the principals of Baby Docs; (d) the strong collateral position of the Plan as a secured note holder; (e) the current high rate of return available on promissory note indebtedness compared to other investments of like security currently available; (f) the stability of the Employer as the Property's commercial tenant; (g) the diversification of Plan assets in light of the Loan; (h) the terms of the Loan as such terms compare with the Plan's investment scheme; (i) the 20% equity investment in the Property made by Baby Docs; and (j) the relatively low percentage (10.9%) of Plan assets represented by the Loan. The fact that the Employer has established and maintained a successful medical parctice that has operated on the Property for over 20 years was also given consideration.

The Trustee believes that the security is more than adequate to collateralize the Loan. The Trustee carefully examined the real estate appraisal report respecting the Property prepared by Mr. Horowitz. Mr. Horowitz is a

[1] Neither the Employer, Baby Docs, or any of the principals of such corporations have any direct dealings with the Trustee. No principal of the Employer or Baby Docs is currently an officer or director of the Trustee. These parties do have certain banking relations with the Trustee, however the parties deposits with the Trustee average less than 1/100 of 1% of the total deposits of the Trustee.

senior member of the American Society of Appraisers and is experienced in valuing commerical real estate in the St. Louis Metropolitan Area. Mr. Horowitz represented that the Property is located in an area in which real estate values are not only stable but are keeping pace with the general rate of inflation.

As an independent fiduciary, the Trustee will monitor the Loan to ensure that payments are made by Baby Docs on a timely basis, that insurance on the collateral is maintained and taxes are paid. The trustee is empowered to enforce the obligations of Baby Docs by making demand for timely payment, initiating legal proceedings in the event of default and by foreclosing on the Property if necessary.

The Loan is consistent with customary business practices in the St. Louis, Missouri area and is in accordance with terms offered at other local banks. The interest rate is reasonable and adequate and is to be renegotiated annually to ensure that the rate remains reasonable and adequate. The Trustee is satisfied that the Plan would suffer no loss in the event of foreclosure.

In light of the foregoing, the Trustee has determined that the Loan is in the best interests of the Plan and its participants and beneficiaries because of the excellent security for the investment, the high rate of return as compared to other available investment alternatives and the ability to further diversify the Plan's Portfolio.

9. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) The Loan will be approved and monitored by the Trustee;

(b) The Loan will be secured by collateral having a value of at least 150% of the amount of the Loan;

(c) The interest rate on the Loan will be adjusted annually by the Trustee;

(d) The Loan represents less then 11% of Plan assets; and

(e) The Trustee has determined that the Loan is in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Chattanooga Electrical Joint Apprenticeship and Training Trust Fund (the Plan) Located in Chattanooga, TN

[Application No. L-6926]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) shall not apply to the construction loan and to the permanent financing in the amount of $370,000 made to the Plan by IBEW Local Union No. 175, a party in interest with respect to the Plan, provided that the terms of the transactions were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transactions were consummated.

EFFECTIVE DATE: This exemption, if granted, will be effective September 1, 1980.

Summary of Facts and Representations

1. The Plan has 125 participants and net assets of approximately $347,331 as of July 31, 1986. The agreement establishing the Plan (the Agreement) was entered into between the East Tennessee Chapter, Chattanooga Division, National Electrical Contractors Association, Inc. (the Employers) and Local Union No. 175 of the International Brotherhood of Electrical Workers (the Union). The Agreement provides that the Plan shall be conducted only as a nonprofit fund solely and exclusively for the purpose of supporting a program for the training and education of electrical apprentices and journeymen, and programs in furtherance thereof. The Plan is administered by a board of trustees which consists of 6 members, three appointed by the Employers and three appointed by the Union. The collective bargaining agreement between the Union and the Employers provides that electrical contractors will pay 1% of their gross payroll to the Plan for its funding.

2. During the period beginning in 1987, the Plan began to suffer from cash flow problems because of the decline in the construction industry in the Chattanooga area. As a result of the decline in the construction industry, contributions to the Plan were substantially reduced. It further appeared to the Plan's trustees that no relief would be available to the Plan in the foreseeable future. The Plan's trustees realized that without additional resources substantial cutbacks in the operation of the Plan's training programs would result.

3. On December 13, 1979, in order to help alleviate the cash flow problems and thereby increase the effectiveness of its training program, the Plan entered into a loan agreement with the Union. The loan agreement provided that the Union would loan money to the Plan at a below market interest rate so that the Plan could construct a building on property owned by the Plan. The additional cash flow generated by the building would then be available to the Plan to carry out its training program.

4. The loan proposal was considered by the Plan's trustees and then presented to the Union's membership where it was subsequently approved. The initial construction loan made to the Plan by the Union was without interest. The permanent financing for this project in the amount of $370,000 was also provided by the Union. This loan, executed on September 1, 1980, was for a 20 year period with monthly payments of $2,650.79 including interest of 6% per annum (the Loan). The applicant represents that the loans provided to the Plan by the Union did not violate the provisions of section 501(a) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. 501). The building constructed by the Plan is a multi-purpose one-story structure which has been rented to Southern Benefit Administrators, Inc. (an unrelated party to the Plan) since August 1, 1980.

5. Mr. Jerry D. Lee, a commercial real estate officer with the American National Bank and Trust Company of Chattanooga, Tennessee, has indicated that the interest rate for a 20 year permanent loan on October 1, 1980 would have been 15.25% and would have also involved an origination fee of 2 points.

6. The applicant states that the loans were made to the Plan at below market interest rates in order to make badly needed capital available to the Plan. The critical nature of the building's income for the Plan, made possible in large part by the favorable rate of interest on the Loan, is demonstrated by analyzing the Plan's statement of cash receipts and disbursements. For the year ended July 31, 1986, the Plan, as a whole, had a negative cash flow of $9,248.55, however the building generated a positive cash flow of $18,159.81. If the Loan had to be renegotiated with a third party, the additional interest incurred and the origination fee would eliminate much of the building's positive cash flow and greatly increase the Plan's overall negative cash flow.

7. In summary, the applicant represents that the transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) There was no interest charged on the construction loan and the rate of interest on the Loan was substantially less than that which the Plan could have obtained from an independent party; and

(b) The loans provided the Plan with badly needed capital so that it could carry on its training function.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

W.J. Collins, Inc. Money Purchase Pension Plan (the Plan) Located in Walnut Creek, CA

[Application No. D-7031]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code. If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the contribution, on December 12, 1985, to the Plan of a 5.416 percent interest (the Interest) in certain unimproved real property (the Real Property) by Warren J. Collins, Inc. (the Employer), a disqualified person with respect to the Plan, provided: (a) the Interest was valued for contribution purposes at no greater than its fair market value at the time of the contribution; and (b) the Employer's Federal tax deduction taken for making the contribution was not greater than the value of the Interest at the time it was contributed to the Plan [1].

Effective Date: If granted, this proposed exemption will be effective December 12, 1985.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with one participant and net assets of $142,215 as of June 30, 1985. The trustee of the Plan as well as the decision-maker with respect to the Plan's investments is Mr. Collins. The Employer, which is engaged as an independent contractor in the buying, selling and leasing of commercial properties, maintains its principal place of business in Walnut Creek, California.

2. In January 1985, the Employer and other parties unrelated to the Employer or Plan, acquired, as cotenants, fee simple interests in 2.21 acres of unimproved, commercially-zoned real property located at 2200 Lisa Lane, Pleasant Hill, California. To purchase the Real Property, the parties made a lump sum cash payment of $400,000. The seller of the Real Property, was BALCO, an unrelated California partnership. Of the total consideration, the Employer paid $21,785 for a 5.416 percent interest in the Real Property. At all times since its acquisition, the Real Property has remained unencumbered.

3. The applicant represents that at the time of the acquisition, the Real Property was landlocked and adjacent to an abandoned railroad. A factor motivating the Employer to purchase the Interest was Mr. Collins' expectation that certain changes would be made to the area. These changes, which were subsequently made during 1986 or are in the process of being made, have included rezoning of the Real Property, the construction of a road extension and the abandonment of a railroad easement.

4. A few months prior to the purchase, the Employer had the Real Property appraised by Mr. Michael J. Baumgardner (Mr. Baumgardner), an independent appraiser who is affiliated with Smith Denton Associates, Inc. of Alamo, California. Mr. Baumgardner has more than eight years of appraisal experience in the San Francisco Bay area. In an appraisal report dated September 25, 1984, Mr. Baumgardner determined that the Real Property had a fair market value of $600,000 as of September 17, 1984.

5. Under Article IV of the Plan documents, the Employer is required to contribute to the Plan an amount that is sufficient to provide benefits to all participants. The Employer's obligation is fixed and it is based upon an actuarial assumption. The contribution may be made on any date or dates selected by the Employer. The contribution amount, which is $30,000, may be paid in cash by the Employer or in other property acceptable to the Plan trustee.

6. On December 12, 1985, the Employer contributed the Interest to the Plan in accordance with the Plan documents. The Interest was valued at approximately $32,496 pursuant to Mr. Baumgardner's appraisal and the Plan paid no real estate fees or commissions in connection therewith. The applicant states that the contribution was made in kind rather than in cash because the Employer was experiencing cash flow problems that would have made a contribution in cash impractical at that time. In addition, the applicant submits that the Employer contributed the Interest to the Plan in order to provide the Plan with a long-term investment vehicle.

7. After making the contribution, the Employer took a deduction of $30,000. The Interest is carried in the Plan's financial records at the same figure and it represents approximately 21 percent of the Plan's assets. The Employer states that the $2,496 amount representing the difference between the fair market value of the Interest and the value of the Interest as carried on the Plan's books has been treated as an Employer contribution to the Plan and that such excess when added to annual additions to the Plan has not exceeded the limitation prescribed by section 415 of the Code.

8. On March 10, 1986, Mr. Baumgardner updated his appraisal of the Real Property. He determined that the fair market value of the Real Property as of March 5, 1986 had remained at $600,000. Mr Baumgardner also asserted that if sold, the plan could expect to realize the appraised value of the Interest.

9. In summary, it is represented that the transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The Interest represents less than 25 percent of the assets of the Plan; (b) the Interest was appraised by a qualified independent appraiser; (c) the Plan did not pay any real estate fees or commissions in connection therewith; and (d) Mr. Collins, who is the only participant in the Plan to be affected by the contribution, believe that the contribution was appropriate for the Plan and desired that such contribution be consummated.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Because Mr. Collins is the only participant in the Plan to be affected by the transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Accordingly, all comments and requests for a public hearing are due within 30 days of the date of publication of the proposed exemption in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

[1] Because Mr. Warren J. Collins (Mr. Collins) is the sole owner of the Employer that sponsors the Plan as well as the sole participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

James R. Plihal, D.D.S., P.S. Fixed Benefit Pension Plan (the Plan) Located in Edmonds, WA

[Application No. D-7158]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code; by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of unimproved real property (the Property) from the Plan to James R. Plihal, D.D.S. (Plihal), a party in interest with respect to the Plan, provided the Plan receives no less than fair market value at the time of sale.

Summary of Facts and Representation

1. The Plan is a defined benefit pension plan which had two participants and total assets of $199,383 as of March 25, 1987. Plihal is a participant in the Plan as well as the sole owner of James R. Plihal, D.D.S., P.S. (the Employer).

2. The Plan purchased the Property from an unrelated party in April 1977. The purchase price was $18,000 which was paid in cash. The Property consists of 0.38 acre of unimproved shoreline located on Orcas Island in the State of Washington. The Plan obtained an appraisal on the Property on July 20, 1987, from Jim Dahl (Dahl) of Dave Church Realty, Inc., a realtor located in Eastsound, Washington. According to the applicant, Dahl is independent of the Plan and the Employer. Placing emphasis on the comparable sales approach to value, Dahl estimated the market value of the Property to be between $25,000 and $27,000. The applicant states that the Property has not been used by any party in interest with respect to the Plan. The Property has produced no income. Since the time of acquisition, the only expenditure the Plan has made in connection with holding the Property has been the payment of less than $3,000 in property taxes.

3. The Property appeared to be a good investment for the Plan at the time of purchase, since it was a well located lot on a popular vacation island. However, since that time San Juan County, in which the island is located, has placed such restrictions on the Property, according to the applicant, that it may no longer be effectively improved. Accordingly, the Plan proposes to sell the Property to Plihal for $26,000 or fair market value at the time of sale, whichever is higher. The sale will be entirely for cash and the Plan will pay no fees or commissions in regard to the transaction. The proceeds of the sale will be invested in assets which produce income for the Plan.

4. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property will be entirely for cash and the Plan will pay no fees or commissions in regard to the sale; (2) Plihal will pay no less than fair market value for the Property at the time of sale; (3) the fair market value will be established by a current independent appraisal of the Property; and (4) the proceeds of the sale will be invested in other assets which will produce income for the Plan.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Linton Industries, Inc. Retirement Plan and Trust (the Plan) Located in Lynnwood, WA

[Application No. D-7222]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan (the Loan) by the Plan of $240,000 to Linton Industries, Inc. (the Employer), a party in interest with respect to the Plan, provided the terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 12 participants and total assets of $963,000 as of June 15, 1987. The trustee of the Plan as well as the decision-maker with respect to Plan investments is Mr. Robert Linton (Mr. Linton), the sole shareholder of the Employer. The Employer, which maintains its principal place of business in Lynnwood, Washington, is engaged in the business of precision and general metal fabrication.

2. An administrative exemption is requested to permit the Plan to lend $240,000 to the Employer. The Employer will use the Loan proceeds to finance part of the purchase price of a new Bliss 300-Ton 54 × 96 straight side press (the Press) costing approximately $317,325. The Press will be utilized by the Employer in its manufacturing operations.

3. The terms of the Loan are substantially similar to the terms extended to the Employer by CityBank (CityBank) of Lynnwood, Washington, an unrelated entity, in a loan commitment letter dated April 15, 1987. However, the only difference between CityBank's loan commitment and the terms expressed in the promissory note evidencing the Loan is in the loan amount. Whereas CityBank has committed to lend $250,000 to the Employer until December 31, 1987, the proposed Loan that will be offered by the Plan is for $240,000.

The Loan will require equal monthly payments of principal and interest over a ten year period. In addition, the Loan will carry a floating interest rate of 1½ percent above the prime rate of Rainier National Bank of Seattle, Washington. The interest rate will be adjusted quarterly by Mr. Sidney J. Starr, C.P.A. (Mr. Starr) of Bellevue, Washington who has agreed to serve as the independent fiduciary for the Plan with respect to the Loan. Any costs or expenses incurred by the Plan in connection with the administration of the Loan will be borne by the Employer.

4. The Loan will be secured by first lien interests in the Press and certain existing machinery (the Existing Machinery) that the Employer maintains on its business premises and which is currently unencumbered. Such Existing Machinery includes: A Niagara Model IB 65-4 Press Brake, a Di-Acro Hydra Power Model 55-8 Press Brake with 2 Axis Hurco Autobend, a Cincinnati #5 Press Brake, a Di-Acro Hydra Power Model 55-10 Press Brake with 2-Axis Hurco Autobend, a Wysong and Miles Model 1010 Shear with Computer Operator Back Gauge, a Dreis and Krump Model 4510-D Press Brake, a Cincinnati 400-Ton Mechanical Press Brake and a Cincinnati ¼" × 12' Shear with 2 Sets of HCHC Blades.

5. To perfect the Plan's security interests in the Press and the Existing Machinery, the Employer will execute UCC Financing Statements and security agreements with applicable state and county agencies. In addition, the Press and the Existing Machinery will be

insured by the Employer against casualty loss throughout the duration of the Loan and the Plan will be designated as the loss payee of such insurance. At all times, the aggregate fair market value of the Press and the Exiting Machinery will be equal to at least 200 percent of the outstanding principal balance of the Loan. In the event that the value of the collateral should ever fall below this level, Mr. Starr will require that the Employer pledge additional security or call for payment in full of the Loan.

6. The Press and the Existing Machinery were valued by Mr. Warren J. Barlow (Mr. Barlow), Manager of the Used Machine and Tool Department of Hallidie Machinery Company, Inc. (Hallidie) of Seattle, Washington. Hallidie, an unrelated entity, is one of the largest machinery tool distribution companies in the United States. Hallidie has been in the business of new and used machinery sales and purchases since 1900. Mr. Barlow, an employee of Hallidie for over 32 years, is a member of the Association of Machinery Equipment Appraisers.

By letter dated April 9, 1987, Mr. Barlow indicated that he had inspected the Existing Machinery at the Employer's plant. Based upon his inspection, he concluded that the Existing Machinery had been well-maintained by the Employer and that such collateral would have the following values:

Niagara Model IB 60-4 Press Brake	$10,500.00
Di-Acro Hydra Power Model 55-8 Press Brake with 2-Axis Hurco Autobend	30,000.00
Cincinnati ±5 Press Brake	14,500.00
Di-Acro Hydra Power Model 55-10 Press Brake with 2-Axis Hurco Autobend	39,500.00
Wysong and Miles Model 1010 Shear with Computer Operator Back Gauge	29,500.00
Dreis and Krump Model 4510-D Press Brake	29,500.00
Cincinnati 400-Ton Mechanical Press Brake	35,000.00
Cincinnati ¼" × 12' Shear with 2 Sets of HCHC Blades	30,000.000
Total Fair Market Value of Existing Machinery:	$218,500.00

In subsequent correspondence dated June 9, 1987, Mr. Barlow opined that the Press, which will be acquired by the Employer for $317,325, would retain 90 percent of its value on the date following its institution on the Employer's business premises. Mr. Barlow also determined that the Press would depreciate at the rate of 10 percent per year for five years. As for the Existing Machinery, Mr. Barlow concluded that such equipment would not decline in value in the foreseeable future. Finally, with respect to the resalability of the collateral, Mr. Barlow thought that both the Existing Machinery and the Press could be easily sold in the event of a distress sale.

7. As stated above, Mr. Starr will serve as the independent fiduciary for the Loan. Mr. Starr represents that he does not have a familial or business relationship with the Employer or with Mr. Linton. He indicates that he has been a certified public accountant since 1978 and that in his practice of accountancy, he has been involved with many clients who sponsor retirement plans. Mr. Starr further represents that he has consulted with legal counsel experienced with the Act and that he understands his duties, responsibilities and liabilities under the Act in serving as a fiduciary with respect to the Plan.

In analyzing the Loan, Mr. Starr represents that he has examined the Plan's investment portfolio, considered the liquidity requirements of the Plan, considered the diversification of the Plan's assets in light of the Loan and considered whether or not the proposed Loan will comply with the Plan's investment objectives and policies. Based upon this review, Mr. Starr has determined that the Loan is in the best interests of the Plan and its participants and beneficiaries. He states that the Loan is consistent with the Plan's overall investment portfolio as well as with its objectives and policies. He also asserted that the Loan will not prevent the Plan from meeting its liquidity requirements or result in a loss of diversification of the Plan's assets.

In concluding that the Loan is an appropriate and suitable investment for the Plan, Mr. Starr explains that he is persuaded by the fact that:

a. The Loan amount represents less than 25 percent of the Plan's assets.

b. The Plan will not likely have a great need for liquidity during the Loan term because none of its participants are close to retirement age.

c. The terms of the Loan are substantially identical to the terms of the loan commitment from CityBank.

d. The Loan will be secured by the Press and the Existing Machinery of the Employer. Throughout the Loan duration, the collateral will most probably have a combined fair market value that is in excess of 200 percent of the outstanding principal balance of the Loan.

e. The Loan provides a much greater rate of return to the Plan than is available in the marketplace for investments with equivalent degrees of low risk.

As the independent fiduciary, Mr. Starr represents that he will monitor the Loan on behalf of the Plan. In addition, Mr. Starr states that he will take all actions that are necessary and proper to safeguard the interests of the Plan and its participants and beneficiaries.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) Mr. Starr, who will approve and monitor the Loan as the independent fiduciary, believes the Loan is in the best interests of the Plan and its participants and beneficiaries; (b) the Loan will represent less than 25 percent of the Plan's assets; (c) with the exception of the Loan amount, the terms of the Loan are identical to the terms offered by CityBank in a loan commitment to the Employer; (d) the Loan will be secured by first lien interests in the Press and the Existing Machinery which have a combined fair market value that is in excess of 200 percent of the Loan amount; and (e) Mr. Starr will ensure that the aggregate value of the Prss and the Existing Machinery remains at least equal to 200 percent of the outstanding balance of the Loan or take appropriate remedies if such level is not maintained.

FOR FURTHER INFORMATION CONTACT: Mr. Jan D. Broady of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Federal Paper Board Salaried Employees' Pension Plan (the Salaried Plan); Federal Paper Board Hourly-Wage Employees' Pension Plan (The Hourly Plan); and Federal Paper Board Co., Inc. Pension Plan for Hourly Employees of the Paper Division-Carolina Operations (the Carolina Plan; together, the Plans) Located in Montvale, NJ

(Application No. D-7268)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting form the aplication of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the contribution to the Plans of certain real property (the Property) by the Federal Paper Board Company, Inc. (Federal), the Plans' sponsor, provided the Property will be valued at no greater than its fair market value at the time of contribution.

Summary of Facts and Representations

1. The Salaried Plan is a defined benefit plan that currently has approximately 1,395 active participants. The Hourly Plan is a defined benefit plan which has approximately 5,327 active participants. The Carolina Plan, also a defined benefit plan, currently has approximately 1,758 active participants. The assets of all three Plans are held in a master trust fund (the Master Trust). The trustee of the Master Trust is the Wachovia Bank and Trust Company, N.A. (Wachovia), of Winston-Salem, N.C., which has exclusive authority with respect to the acquisition of disposition of assets held in trust under the Plans.

2. Federal proposes to make a portion of its contributions to the Plans for each of the Plans' 1986 plan years in the form of real property. The Property is location in Colonial Heights, Virginia, and consists of 30.188 acres of land which is adjacent to property on which the construction of a mall is scheduled for completion in 1989. It is contemplated that the Plans will develop the Property. Wachovia will have complete decision-making authority with regard to the Plans' development of the Property. No party in interest will be involved in the development of the Property, nor will the Property be leased to any parties in interest. The Property will be contributed by Federal to the Plans free and clear of any liens, mortgages or other encumbrances.

3. The Property contributed to the Master Trust will be allocated proportionately to each of the Plans (i.e., on the basis of the total assets held in the Master Trust for each of the Plans respectively). After the contribution has been made, the portion of the Property allocated to each of the Plans under the Master Trust will comprise approximately 2.5% of each of the Plans' total assets.

4. The Property has been appraised by Mr. Jack C. Warner of Gilbert/Commonwealth, Inc., an independent appraiser in Reading, Pennsylvania, as having a fair market value of $55,000 per acre or a total value of $1,660,340 as of February 28, 1987. Federal represents that its income tax deduction for the contribution of the Property will not be greater than the fair market value of the Property on the date of the contribution.

5. Wachovia, the Plan' trustee, represents that it has extensive experience in the management of funds of employees benefit plans, and real estate investments for such plans. It currently serves as fiduciary for over $31 billion in descretionary assets held by employee benefit, institutional and charitable trusts. Wachovia currently manages over $600 million in real estate assets for employee benefit and institutional clients. Wachovia represents that is understands and acknowledges its duties, responsibilities and liabilities under the Act as a fiduciary with respect to the Plans. Wachovia represents that it does not own any shares of Federal common stock, nor are there any common Board members of the Boards of Directors of Federal and Wachovia. As of June 30, 1987, Federal had average balances on deposit with Wachovia of $243,000, compared to total deposits of Wachovia of $8.7 billion, or 0.0028%. Wachovia had outstanding loans to Federal as of June 30, 1987 of $1,753,125, compared to total Wachovia loans of $6.7 billion, or 0.0255%.

6. Wachovia has reviewed the proposed contribution of the Property to the Plans and has determined that it is appropriate for the Plans and in the Plans' best interests. Wachovia represents that the contribution offers the Plans the opportunity to receive valuable real estate without any outlay of cash or acquisition costs. The Property has the potential for significant long-term appreciation in value. Furthermore, Wachovia represents that inasmuch as the Master Trust's investment portfolio does not presently include any real estate, the contribution will provide several advantages to the Plans, such as the opportunity for increased rates of return and the fact that the Property will serve as an effective hedge against inflation. The Property will also provide portfolio stability as well as asset diversification. Wachovia also represents that the contribution of the Property complies with the Plans' investment objectives and policies. The Plans will retain sufficient liquidity for their anticipated needs. The deed conveying the Property to the Plans will be duly recorded as an item of public record.

7. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The Property will represent approximately 2.5% of the assets of the Master Trust and of each Plan; (2) the Property has been appraised by a qualified, independent appraiser; and (3) Wachovia, the Plans' independent fiduciary, has determined that the proposed transaction is appropriate for the Plans and in the best interests of their participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (The is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of October 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-24632 Filed 10-22-87; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313 et al]

Issuance of Director's Decision; Arkansas Power and Light Co. et al.

In the matter of Docket No. 50-313, Arkansas Power & Light Company, Arkansas Nuclear One, Unit 1; Docket No. 50-346, Toledo Edison Company, et al, Davis-Besse Nuclear Station, Unit 1; Docket No. 50-312, Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Docket Nos. 50-438 and 50-439, Tennessee Valley Authority, Bellefonte Nuclear Plant, Units 1 and 2; Docket No. 50-302, Florida Power Corporation, et al., Crystal River Nuclear Generating, Plant, Unit 3; Docket Nos. 50-269, 50-270 and 50-287, Duke Power Company, Oconee Nuclear Station, Units 1, 2, and 3; Docket No. 50-289, GPU Nuclear Corporation, et al., Three Mile Island Nuclear Station, Unit 1.

Notice is hereby given that the Director, Office of Nuclear reactor Regulation, has issued a decision on a petition submitted to the Commission by the Union of Concerned Scientists and others. The petition requested the suspension of the operating licenses of Arkansas Nuclear One Unit 1; Crystal River Unit 3; Davis-Besse Unit 1; Oconee Units 1, 2, and 3; Rancho Seco; and Three Mile Island Unit 1; and the suspension of the construction permits for Bellefonte Units 1 and 2. The Petition also requested that before these operating licenses and construction permits are reinstated (1) the NRC should complete its safety reassessment program for the plants designed by Babcock & Wilcox (B&W) and identify the specific corrective action to be taken at each B&W plant; (2) a public adjudicatory hearing on each plant should be held to determine whether these corrective actions are sufficient to correct the alleged deficiencies, and (3) the changes found to be necessary by the hearing board should be fully implemented at the plants with operating licenses and should be incorporated as conditions in the construction permits of the Bellefonte plants. Unless conditions (1), (2), and (3) above are met, the Petition requested that the operating licenses and construction permits for the B&W plants be revoked.

The Director, Office of Nuclear Reactor Regulation, has declined to institute proceedings pursuant to 10 CFR 2.202 and accordingly, to grant relief pursuant to 10 CFR 2.206. The reasons for this decision are explained in "Director's Decision Under 10 CFR 2.206," DD-87-18, which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. 20555, and in the following Local Public Document Rooms:

Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801
Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629
William Carlson Library, University of Toledo, Documents Department, 2801 West Bancroft Avenue, Toledo, Ohio 43606
Robert M. Cooper Library, Public Documents Collection, Clemson University, Clemson, SC 29631
Sacramento Public Library, 828 I Street, Sacramento, California 95814
Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17105
Scottsboro Public Library, 1002 South Broad Street, Scottsboro, Alabama 35768

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision wil constitute the final action of the Commission twenty-five (25) days after issuance, unles the Commission, on its own motion, institutes review of the Decision within that time period.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 19th day of October, 1987.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-24597 Filed 10-22-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Denial of Amendments to Facility Operating Licenses and Oppportunity for Hearing; Duke Power Company

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to the Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3 (the facility), located in Oconee County, South Carolina.

The proposed amendments would have revised Technical Specification Section 6.2.2 to make it consistent with the Technical Specifications for Catawba and McGuire Nuclear Stations and include the Superintendent of Integrated Scheduling and Station Services Superintendent. Notice of consideration of issuance of the amendments was published in the **Federal Register** on October 23, 1985 (50 FR 43026). The licensee's application for the amendments was dated August 22, 1985, and supplemented February 11, 1986.

The request was found unaceptable since the revisions requested were not supported by adequate justification.

The licensee was notified of the Commission's denial of this request by letter dated October 19, 1987.

By November 23, 1987 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Esq., Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated August 22, 1985, as supplemented February 11, 1986, and (2) the Commission's letter to Duke Power Company dated October 19, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Bethesda, Maryland, this 19th day of October 1987.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II.

[FR Doc. 87-24598 Filed 10-22-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Systematic Assessment of Operating Experience; Meeting

The ACRS Subcommittee on Systematic Assessment of Operating Experience will hold a meeting on November 3, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 3, 1987—1:00 p.m. Until the Conclusion of Business

The Subcommittee will discuss AEOD's role in helping the NRC learn from operating experience.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 20, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-24594 Filed 10-22-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on TVA Organizational Issues; Meeting

The ACRS Subcommittee on TVA Organizational Issues will hold a meeting on November 4, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 4, 1987—8:30 A.M. Until the Conclusion of Business

The Subcommittee will review the safety issues associated with TVA management reorganization and the Sequoyah restart.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will than hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 20, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-24595 Filed 10-22-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Maintenance Practices and Procedures; Postponed

The ACRS Subcommittee on Maintenance Practices and Procedures scheduled for October 30, 1987, 8:00 a.m. until 11:00 a.m., Room 1046, 1717 H Street, NW, Washington, DC has been postponed. Notice of this meeting was published Wednesday, October 14, 1987 (52 FR 38160).

Dated: October 20, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-24596 Filed 10-22-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270-121, Form T-1
File No. 270-122, Form T-2
File No. 270-123, Form T-3
File No. 270-124, Form T-4
File No. 270-115, Rule 7a-37
File No. 270-127, Rule 14f-1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission; has submitted for an extension of clearance of the following forms: Form T-1; Form T-2; Form T-3; Form T-4; Rule 7a-37; Rule 14f-1. The forms provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly-traded securities provide investors and the marketplace with adequate information and some forms grant certain limited exemptions from provisions of the Securities Act of 1933. Form T-1 effects 1665 filers for a total of 44 burden hours per form; Form T-2

effects 36 filers for a total of 28 burden hours per form; Form T-3 effects 55 filers for a total of 44 burden hours per form; Form T-4 effects 3 filers for a total of 5 burden hours per form; Rule 7a-37 is not a form and has been assigned one burden hour for administrative purposes; and Rule 14f-1 effects 44 respondents for a total of 18 burden hours per form. Submit comments to OMB Desk Officer, Mr. Robert Neal (202) 395-7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

October 19, 1987.

[FR Doc. 87-24612 Filed 10-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16059; 812-6823]

Algemene Spaar-en Lijfrentekas/ Caisse Generale d'Epargne et de Retraite and ASLK-CGER North America, Inc.; Application

October 16, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

Applicants: Algemene Spaar-en Lijfrentekas/Caisse Generale d'Epargne et de Retraite ("Algemene") and ASLK-CGER North America, Inc. ("ASKL-CGER") (collectively, "Applicants").

Relevent 1940 Act sections: Exemption required under section 6(c) from all provisions of the 1940 Act.

Summary of the application: Applicants seek an order exempting them from all provisions of the 1940 Act in connection with the offer and sale of their debt securities in the United States.

Filing date: The application was filed on August 11, 1987 and amended on October 14, 1987.

Hearing or notification of hearings: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o C. Thomas Kunz, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Statements and Representations

1. Algemene is a Belgian public sector banking institution which is empowered to carry out the whole range of commercial banking activities and a broad range of insurance activities. Algemene is a single legal entity which is divided for operating, accounting and regulatory purposes into a banking division (the "Bank Division") and a unit comprising insurance, pension and work accident annuity funds (the "Insurance Division").

2. The Bank Division is engaged in a broad range of savings bank operations and general banking activities, including accepting deposits from individuals and corporate customers through a network of branches. In addition to accepting deposits and making loans, the Bank Division engages in other bank and bank-related activities as more fully described in the application. The Insurance Division is divided into three separate funds: the Insurance Fund, the Pension Fund and the Industrial Accident Pension Fund is described more fully in the application.

3. The Bank Division is subject to extensive regulation by Belgian banking authorities that is comparable in many respects to the regulation of United States banks. The Insurance Division is subject to the control of the "Office de Controles des Assurance" (the "Office") which ensures that insurance companies satisfy certain solvency and profitability ratios and maintain adequate reserves. The Office also exercises broad investigative powers.

4. ASLK-CGER was organized under the laws of the State of Delaware on July 28, 1987. All of its outstanding capital stock is owned by Algemene. It will not issue any other common or capital stock. Its sole business will be the issuance of debt obligations and the provisions of the proceeds thereof to Algemene and/or subsidiaries of Algemene, and substantially all of ASLK-CGER's assets will consist of amounts receivable from Algemene.

5. Applicants propose to issue short-term promissory notes (the "Commercial Paper Notes") in the United States. The Commercial Paper Notes to be issued will be: (i) Direct obligations of Algemene, (ii) direct obligations of ASLK/CGER unconditionally guaranteed by Algemene (iii) some combination of (i) and (ii). The Commercial Paper Notes will be offered and sold pursuant to the exemption from the registration requirements of the Securities Act of 1933 (the "1933 Act") provided by section 3(a)(3) thereof. The Commercial Paper Notes will be sold in minimum denominations of $100,000, will have maturities not exceeding 270 days, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holders or whichever of the Applicants issued the Commercial Paper Notes. Applicants undertake not to market any Commercial Paper Notes prior to receiving an opinion of its United States counsel to the effect that the proposed offering is exempt from the registration requirements of the 1933 Act by virtue of Section 3(a)(3) thereof. Applicants do not request SEC review or approval of such counsel's opinion regarding the availability of an exemption from the Commercial Paper Notes under section 3(a)(3) of the 1933 Act.

6. If the Commercial Paper Notes are issued by ASLK-CGER and guaranteed by Algemene, the Commercial Paper Notes will rank pari passu among themselves and equally with all other unsecured, unsubordinated indebtedness of ASLK-CGER, and Algemene's guarantee of the Commercial Paper Notes will rank equally with all other unsecured and unsubordinated obligations of Algemene including deposits received by it in its banking business. The obligations of Algemene under its guaranty will be enforceable against it directly by the holders of the Commercial Paper Notes. If the Commercial Paper Notes are issued by Algemene, they will be the direct liabilities of Algemene, will rank pari passu among themselves and equally with all other unsecured and unsubordinated obligations of Algemene, including deposits received by it in its banking business.

7. The Commercial Paper Notes will be offered publicly, through one or more major dealers, only to the types of

sophisticated and largely institutional investors that ordinarily participate in the commercial paper market. Applicants undertake to insure that each dealer in the Commercial Paper Notes will furnish to each offeree memoranda describing the businesses of the Applicants and providing financial information from the most recent annual audited financial statements for Algemene, together with a brief description of the material differences between the Belgian accounting principles utilized in the preparation of the financial statements of Algemene and generally accepted accounting principles as applied in the United States. The memoranda prepared by each dealer will be updated as promptly as practicable to reflect material adverse changes in the financial status of the Applicants and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States. Applicants will select a major commercial bank or trust company to act as issuing and paying agent for the Commercial Paper Notes.

8. Applicants represent that, prior to their issuance, the Commercial Paper Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and the Applicant's United States counsel shall have certified that the rating was received. Applicants are not affiliated with any nationally recognized statistical rating agency. Algemene will submit to the jurisdiction of any State or Federal Court in The City of New York, and will authorize an agent in The City of New York to accept service of process, in an action based upon its obligations under the Commercial Paper Notes issued by it or its gurantee of Commercial Paper Notes issued by ASLK-CGER. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Commercial Paper Notes have been paid.

9. ASLK-CGER will agree to make advances to Algemene and its subsidiaries from the net proceeds of the sale of any Commercial Paper Notes issued by ASLK-CGER. Each advance will have the same maturity date as the maturity date of the Commercial Paper Notes issued by ASLK-CGER to obtain funds to make such advance. As noted above, Algemene will have guaranteed payment of the Commercial Paper Notes and will consent to the enforcement of such guarantee by the holders of the Commercial Paper Notes or by the Depository on behalf of the holders of the Commercial Paper Notes.

10. Substantially all (in no event less than 85%) of the proceeds of the sale of the Commercial Paper Notes issued by ASLK-CGER will be advanced as soon as practicable (but in no event more than six months after receipt) to Algemene (or companies controlled by Algemene) on terms that will allow ASLK-CGER to make timely payments on such Commercial Paper Notes.

11. Applicants may, from time to time, offer their debt securities other than the Commercial Paper Notes for sale in the United States. ASLK-CGER may also, from time to time, offer its debt securities other than the Commercial Paper Notes for sale outside of the United States. The proceeds of any such future offerings of debt securities will, in the case of debt securities of ASLK-CGER, be loaned or advanced to Algemene or its subsidiaries in a similar manner to the proposed advances from the proceeds of the Commercial Paper Notes and, in the case of such debt securities issued by Algemene, utilized directly by Algemene or its subsidiaries for general banking or other purposes. The future debt securities of ASLK-CGER will be supported by Algemene's unconditional guarantee and Algemene will expressly consent to the enforcement of such guarantee directly by the holders of the debt securities.

12. Applicants undertake that, prior to their issuance, any further issuer their debt securities other than the Commercial Paper Notes in the United States will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization that is not affiliated with Applicants and that the Applicants' United States counsel shall have certified that the rating was received. However, no such rating shall be required to be obtained with respect to a future issue of the Applicant's debt securities other than the Commercial Paper Notes in the United States if, in the opinion of United States counsel to the Applicants, such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 of Regulation D under the 1933 Act and various releases and "no-action" letters made public by the Commission, an exemption is available for the issue pursuant to subsection 4(2) of the 1933 Act or Regulation D promulgated thereunder.

13. Applicants undertake that neither of them will issue or sell in the future any of their debt securities in the United States, and ASLK-CGER undertakes that it will not issue or sell in the future any of its debt securities other than in the United States, unless an opinion of United States counsel or a "no-action" letter issued by the SEC has been delivered to the effect that the proposed offering is in compliance with, or entitled to an exemption from, the registration requirements of the 1933 Act, or unless the offering is made pursuant to a registration statement under the 1933 Act. Applicants also undertake that any future offering of debt securities will be effected on the basis of disclosure documents at least as comprehensive in their description of ASLK-CGER or Algemene, their businesses and their financial statements as the disclosure documents customarily used in offering similar types of debt securities in the jurisdictions in which such offering is made and that such disclosure documents will be updated as promptly as practicable to reflect material changes in the financial status of ASLK-CGER or Algemene. However, in the case of an offering made pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registration.

14. Algemene will, in connection with any future offering of its or ASLK-CGER's debt securities in the United States, appoint an agent to accept service of process in any suit, action or proceeding brought against Algemene on its obligations in respect of such debt securities instituted in any State or Federal court by the holder of any such debt securities. Algemene will expressly submit to the jurisdiction of any State or Federal court located in the City of New York with respect to any such suit, action or proceeding. Such appointment of an agent for service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of such issuance of debt securities have been paid.

Applicants' Legal Analysis

1. Approval of the application is necessary or appropriate in the public interest. If the Applicants were required to register an investment companies and comply with the provisions of the 1940 Act, Algemene would be denied ready access to the United States credit markets either directly through its own debt security issuances or through the borrowing of the proceeds of the Commerical Paper Notes and other debt securities of ASLK-CGER. Approval of the application would be consistent with the protection of investors, because Algemene is extensively regulated by

the Belgian banking and insurance authorities. Such regulation affords protection to investors beyond that provided in the 1940 Act and renders the 1940 Act's protection unnecessary. It would be consistent with the purpose of the 1940 Act and subsection 6(c) to exempt Algemene, which is limited primarily to the banking business by government supervision of a nature and degree similar to that exercises by United States banking authorities.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following condition:

Applicants consent to any SEC order being expressly conditioned on their compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24579 Filed 10-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16062; 812-6208]

College Retirement Equities Fund and Teachers Insurance and Annuity Association of American, Request for Temporary Relief Pending Final Order on Application

October 20, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Request for Temporary Relief.

Applicants: College Retirement Equities Fund ("CREF") and Teachers Insurance and Annuity Association of America ("TIAA") (collectively "Applicants").

Relevant 1940 Act sections: Temporary relief requested *under* section 6(c) of the Investment Company Act of 1940 ("Act") *from* sections 2(a)(32), 2(a)(37), 2(a)(42), 12(b), 12(d), 13(a), 15(a), 15(b), 16(a), 17(f), 18(i), 18(i), 22(c), 22(e), 26(a), 27(c)(1), 27(c)(2), 27(d) and 32(a) of the Act and Rules 0-1(e), 2a-4, 12b-1, 17f-2, 18f-2, 22c-1 and 27e-1 thereunder, and permission to engage in certain transactions requested under section 17(d) of the Act and Rule 17d-1 thereunder.

Summary of proposed action: Applicant request temporary relief that would be effective until a final order on the application.

Filing date: The application was filed on September 26, 1985 and amended on August 18, 1986, March 6, 1987, and April 17, 1987.

Comment period on temporary order: If no hearing is ordered on the question of temporary relief, the relief will be granted pending a final determination on the application. Any interested person may comment on the request for temporary relief or may request a hearing on whether temporary relief should be ordered. Any comments or hearing requests must be received by the SEC by 5:30 p.m. on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve Applicants with the comments or hearing requests, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. CREF and TIAA, 730 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Clifford E. Kirsch, (202) 272-3032, Staff Attorney, Heidi Stam, (202) 272-3017 or Senior Special Counsel, Stanley B. Judd, (202) 272-2079.

SUPPLEMENTARY INFORMATION: The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 253-4300). Also, the Statement on Behalf of the College Retirement Equities Fund and Teachers Insurance and Annuity Association of America, dated August 21, 1987, which requests temporary relief on behalf of the Applicants is available from the SEC's Public Reference Branch.

On July 10, 1987, the Commission issued a notice ("Notice"), published at 52 FR 27095, July 17, 1987, (Investment Company Act Release No. 15866) of an application filed by CREF and TIAA for an order pursuant to section 6(c) of the Act, exempting CREF and TIAA from the provisions of sections 2(a)(32), 2(a)(37), 2(a)(42), 12(b), 12(d), 13(a), 15(a), 15(b), 16(a), 17(f), 18(f), 18(i), 22(c), 22(e), 26(a), 27(c)(1), 27(c)(2), 27(d), and 32(a) of the Act and Rules 0-1(e), 2a-4, 12b-1, 17f-2, 18f-2, 22c-1, and 27e-1 thereunder, and pursuant to section 17(d) of the Act and Rule 17d-1 thereunder permitting certain transactions. The application would permit CREF to, among other things, restrict redemptions, limit the voting rights of its participants, bear distribution costs, and value its annuity annually. The Notice, which is made part of this document by reference, gave any interested person until August 4, 1987, to file a request in writing for a hearing on the application accompanied by a statement of the nature of his interest, the reason for the request, and the issues of fact or law proposed to be controverted.

As of September 21, 1987, the Commission had received 20 hearing requests and 21 other letters opposing the granting of the application (particularly the redeemability and voting relief), urging a hearing, requesting notification if a hearing is ordered and/or requesting that the Commission grant CREF temporary relief to implement its Money Market Account.

The first of the participants to request a hearing [1] proposed the possibility of granting CREF temporary relief to cause it to implement a Money Market Account whose interests would be exchangable for insterests in the existing CREF Stock Account and *vice versa.* Many subsequent hearing requests and letters by participants and colleges strongly supported such temporary relief.[2] CREF also requested temporary relief in its response to the requests for a hearing.[3] CREF stated that it will not proceed with the Money Market Account without the granting of a temporary order.[4]

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24588 Filed 10-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16058; (812-6778)]

Sears Investment Trust, Dual Value Series 6, et al.; Application

Dated: October 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

[1] Professor Schotland's hearing request dated July 30, 1987.

[2] American Association of State Colleges and Universities; American Council on Education; American Association of University Professors; University of Nebraska; Tuskegee University; The University of Maryland; The University of Alabama System; University of Notre Dame; The University of Tennessee; Purdue University; State University of New York; Harvard University; The University of Michigan; Brown University; Professor Craig M. Bradley, Indiana University School of Law; Professor Jeffrey Evans Stake, Indiana University School of Law; Professor Gene R. Schreve, Indiana University School of Law, Mr. Neil Wright; Mr Richard L. Silva employed by Yale University; and Mr. David Alexander, President Pomona College, Trustee of TIAA.

[3] Statement on Behalf of the College Retirement Equities Fund and Teachers Insurance and Annuity Association of America, dated August 31, 1987.

[4] Letter from CREF's counsel to the Office of Insurance Products and Legal Compliance, Division of Investment Management, dated October 6, 1987.

ACTION: Notice of Filing of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Sears Investment Trust, Dual Value Series 6, and all subsequent series of the Dual Value Series and similar series of the Sears Investment Trust (collectively, "Trusts"), and their sponsor, Dean Witter Reynolds Inc. ("Sponsor").

Relevant 1940 Act sections: Order requested under section 17(b) granting exemption from Section 17(a), under Section 6(c) exempting Applicants from Section 14(a), and under Section 45(a).

Summary of application: Applicants seek an order, under section 17(b) to permit the Sponsor to deposit certain assets in addition to securities into the Trusts, under section 6(c) extending relief previously granted to Applicants from section 14(a) ("Prior Order", Investment Company Act Release No. 15424, November 21, 1986), and under section 45(a) extending the confidential treatment granted in the Prior Order. With respect to Applicants' request under section 6(c) and 45(a), such order is sought only to the extent that the proposed operations of the Trusts may be deemed not within the scope of the Prior Order.

FILING DATES: The application was filed on June 29, 1987, and amended on October 5, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m. on Nobember 10, 1987. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Dean Witter Reynolds Inc., Unit Trust Department, 2 World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033, or Brion R. Thompson, Special Counsel (202) 272-3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Prior Order: (1) Exempted Applicants from the provisions of sections 12(d)(1), 14(a) and 22(d); (2) approved certain afflilated transactions under section 17(d) and Rule 17d-1; and (3) granted confidential treatment under section 45(a) to the Sponsor's profit and loss statements filed with the Sponsor's registration statement for the Sears Investment Trust. The Prior Order was limited to Trusts containing a portfolio of: (1) Zero coupon United States government obligations ("Zero Coupon Obligations") and (2) shares of one of the Dean Witter mutual funds ("Fund Shares"). The Sponsor now intends to create additional Trusts within the Dual Value Series and subsequent series of Trusts of the Sears Investment Trust which, although structured in a similar manner, will invest in (1) Zero Coupon Obligations, and (2) assest other than Funds Shares (as more fully described below).

2. Each Dual Value Series and similar Series of Trusts of the Sears Investment Trust will have a portfolio comprised of two components, the first being Zero Coupon Obligations. The second may be one or more a wide variety of assets, including United States minted American Gold Eagle coins ("Gold Eagles"), other gold bullion coins, gold bullion, silver bullion coins or silver bullion and other precious metals (collectively, "Assets") rather than Fund Shares as permitted under the Prior Order. When the portfolio for a Trust has been acquired, the Sponsor will deposit the Zero Coupon Obligations and the Assets with a trustee in the manner stated in the application for the Prior Order. The Sponsor will purchase both the Zero Coupon Obligations and the Assets to be deposited in each Trust from unaffiliated third parties at the current price for such investments. Each Trust will purchase a sufficient amount of Zero Coupon Obligations so that, at the specified maturity date for such Trust, investors purchasing Trust units ("Units") on the initial date of desposit ("Deposit Date") of the securities and Assets would receive back the approximate total amount of their original investment in the Trust, including the sales charge. To the extent that the Assets may have appreciated in value at the maturity of the Trust, the value of the purchaser's investment may have increased.

3. The Sponsor will purchase and deposit bullion coins that trade at approximately the current or spot price of their underlying precious metal component, plus a small premium which reflects fabrication costs and wholesale dealer spread. The Sponsor will purchase only those bullion coins which currently do not have a numismatic value and which are not expected to acquire a numismatic value. To this extent, before purchasing any bullion coins the Sponsor will obtain assurances from the issuer thereof that such coins will be provided in sufficient quantity to ensure that supply will be available to meet demand and that the coins are intended to be traded as bullion rather than numismatic coins.

4. The public offering price of the Units will be calculated in the following manner: (1) During the initial offering period, at the net asset value per Unit computed as of the close of business on each business day based on the offering side value of the Zero Coupon Obligations and the Gold Eagles and other bullion coins which are traded on a dealer market, or at the closing spot price for precious metals, plus a sales charge and (2) after completion of the primary offering period, at the net asset value per Unit computed as of the close of business on each business day based on the bid side value of the Zero Coupon Obligations and the Gold Eagles and other bullion coins, or the closing spot price for precious metals, plus a sales charge. The Zero Coupon Obligations and the Assets will be valued by an independent third-party evaluator. In the case of Gold Eagles and other bullion coins, the evaluator will survey five or six primary coin dealers in the respective market for their bid and asked prices and take an average of such prices, which will be determined as set forth above. In order to pay the annual Trust expenses, on the Deposit Date the Sponsor will deposit one or more current interest paying United States Treasury Obligations into the Trust, because neither the Zero Coupon Obligations nor the Assets will generate any current income which could be used for such purpose.

Applicants' Legal Analysis

1. Applicants may not avail themselves of the exemption afforded by section 17(a)(1)(C) from section 17(a) of the 1940 Act where the Sponsor deposits Assets, such as Gold Eagles into a Trust portfolio because that exemption relates only to the deposit of "securities" as defined in section 2(a)(36). Therefore, Applicants seek an order under section 17(b) of the 1940 Act exempting them

from the provisions of section 17(a) to permit the Sponsor, as depositor, to deposit Gold Eagles, other bullion coins, precious metals and other similar property which may not meet the statutory definition of the term "security". Applicants believe that the requested order should be granted on the basis that: (1) The terms of the proposed transaction (*i.e.*, the deposit of Assets rather than "securities") are reasonable, fair and do not involve overreaching, (2) the proposed transaction is consistent with the policy of the concerned investment company, and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. Applicants assert that but for the fact that Assets are not within the definition of "securities" under section 2(a)(36) of the 1940 Act, the application for exemption from section 17(a) would be unnecessary. Applicants also assert that the deposit of Assets will be conducted in a fashion identical to the deposit of securities into a Trust portfolio. The Assets will be purchased by the Sponsor in professional and competitive coin and/or precious metals markets, will be priced and evaluated by an independent third party evaluator and will be deposited with the trustee or trustee's agent to be held until the maturity of a Trust or earlier upon liquidation or redemption. Applicants state that disclosure language relating to the risks of investing in the Assets will be included in the prospectus for each Trust, and the portfolio page listing each Trust's Assets will adequately describe and identify the Assets. The Sponsor will treat the purchase, sale and deposit of Assets in exactly the same fashion as the purchase, sale and deposit of securities and, thus, there will be no overreaching on the part of any person concerned. Applicants also assert that the proposed deposit of Assets into the Trusts will be consistent with investment policy of the concerned investment company insofar as the Trusts seek to provide protection of principal through investment in Zero Coupon Obligations and capital appreciation through other investments chosen by the Sponsor in light of that policy. Accordingly, Applicants submit that the proposed transactions are consistent with the provisions, policies and purposes of the 1940 Act.

3. Applicants contend that the existing exemption from section 14(a) and the granting of confidential treatment pursuant to Section 45(a) should extend to the proposed operation of the Trusts in the same manner as under the Prior Order. In this regard, Applicants believe that the rationale for granting the Prior Order is unchanged by the deposit of Assets in addition to securities. Therefore, Applicants submit that: (1) The requested exemption from section 14(a) continues to be appropriate in the public interest and consistent with the the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and (2) public disclosure of the Sponsor's profit and loss statements furnished in connection with the Trusts' registration statements is neither necessary nor appropriate in the public interest or for the protection of investors.

For the SEC, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24584 Filed 10-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25042; File No. SR-CBOE-87-43]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change

On October 7, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and 19b-4 thereunder, [2] a proposed rule change to allow open trading to continue in expiring individual stock option series until the commencement of the closing rotation in such series.

Traditionally, options have been open for trading until ten minutes after the close of the primary market for the underling securities. This had been the norm because it ordinarily permits accurate pricing relative to the last sale of the underlying secuirties. On the last trading day of an options series prior to its expiration, the Exchange generally has employed a closing rotation at the close of the opening trading. The time for such a closing rotation was 2:00 p.m. Chicago time until 1983. In 1983, the Exchange set the time for the closing rotation in expiring index options series at 3:00 p.m. Chicago time, and in 1984, the Exchange conformed the time for the closing rotation in expiring individual stock options series to the 3:00 p.m. index option closing time. Also in 1984, the closing rotation for expiring individual stock options was amended to commence after the final price of the underlying stock is established; closing rotations in expiring index options were eliminated. At the time, however, the time at which open trading in expiring individual stock options ceased (3:00 p.m. Chicago time) was not changed.

The Exchange states that, in its experience, closing rotations in individual stock options series often do not commence until 3:10 p.m. Chicago time. The Exchange proposes to continue open trading in expiring individual stock option series until the commencement of the closing rotation in such series. The American, New York and Pacific Stock Exchanges permit orders to be entered, modified or cancelled in a particular expiring series until the commencement of the closing rotation in such series. [3] The Exchange, therefore, proposes to conform Interpretations and Policies .03 of CBOE Rule 6.2 (trading Rotations) to the rules of other options exchanges which allow trading until a closing rotation is commenced.

The Exchange also proposes to amend Interpretations and Policies .02 of Rule 6.2 to clarify that transactions may be effected in non-expiring options and expiring individual stock options after the normal close of trading (3:10 p.m. Chicago time) if they occur during a trading rotation. This proposed amendment also clarifies that the procedures described in Interpretations and Policies .02 for employing a trading rotation after 2:30 p.m. apply to non-expiring options.

The Commisison finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, [4] and the rules and regulations thereunder. The Commission believes that allowing open trading to continue until the beginning of the closing rotation is expiring individual options will permit the CBOE to conform its rules to the rules of the American, New York, and Pacific Stock Exchanges. The Exchange's proposal

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1986).

[3] American Stock Exchange Rule 918, Commentary .01(c); New York Stock Exchange Rule 717, Supplementary Mateiral .10(c); Pacific Stock Exchang Rule VI, section 36, Commentary .01(c).

[4] 15 U.S.C. 78f (1982).

also should have a beneficial impact on the execution of investors' orders by allowing investors to enter, modify, or cancel orders until the commencement of the closing rotation in a particular expiring series.

The commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the proposed rule is substantively identical to rules of American, New York, and Pacific Stock Exchanges. Also, approval of the proposal will eliminate possible investor confusion arising from different procedures at different options exchanges and will provide additional flexibility to investors in submitting their options orders in individual equity options series that are scheduled to expire on Saturday, October 17, 1987.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 13, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.[6]

Dated: October 16, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24613 Filed 10-22-87; 8:45 am]

BILING CODE 8010-01-M

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12)(1986).

[Release No. 34-25043; File No. SR-NASD-87-39]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Implementing a Late Fee for Certain Subscribers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 7, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The self-regulatory organization has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and corresponding Rule 19b-4(e), which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") hereby files, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to establish a new late fee that would be levied against delinquent subscribers receiving NASDAQ Level 1 Service through an authorized vendor. To the extent that vendors have assumed contractual responsibility for collection and remittance of NASDAQ Level 1 subscriber charges, the new late fee would also apply.

The NASD is implementing this fee by insertion of the following amendatory language in Part V, Paragraph G of Schedule D [1] to the NASD By-Laws (deletions bracketed/additions italicized):

G. Late Fees

All NASDAQ charges, *excepting those for NASDAQ Level 1 Service,* which are past due for 60 days or more shall be subject to a late fee of 10% of the amount past due. *Charges for NASDAQ Level 1 Service that are past due shall be subject to a late fee equal to one and one-half percent (1½%) per month of the unpaid balance commencing forty-five (45) days after the invoice date.*

[1] The Commission recently approved File No. SR-NASD-87-8 which effected a reorganization of Schedule D. The above-described amendment will appear under Part IX of the reorganized Schedule D. However, because the applicable subsection may change, the NASD has referenced this rule change according to the scheme existing immediately before the reorganization.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This filing is intended to effect the NASDAQ Board's determination to revise the late fee levied against subscribers delinquent in paying for NASDAQ Level 1 quotation information obtained through authorized vendors. To the extent that vendors have assumed contractual responsibility for collection and remittance of these subscriber fees, the new late fee would also apply. Previously, a one time charge of 10% was due when a subscriber paid for NASDAQ Level 1 Service at least 60 days after it was due. The new fee will apply equally to delinquent charges owed by professional and nonprofessional subscribers serviced by vendors. Lastly, the late fee's application is limited to NASDAQ's provision of Level 1 quotation service.

The NASD anticipates that adoption of the late fee will curb the incidence of delinquency and offset some of the added costs associated with subscriber delinquencies. In this regard, it should be noted that timely receipt of subscriber fees is a contractual precondition to obtaining the NASDAQ Level 1 Service. It is also important to the NASD's funding of the facilities and operations needed to provide this service as well as various automation enhancements that ultimately benefit subscribers and the investing public. Hence, sound business practice and public policy considerations both support the adoption of this late fee.

Section 15A(b)(5) of the Act requires the equitable allocation of reasonable fees among persons accessing data services offered by the NASD. Although related to the NASDAQ Level 1 Service,

the late fee becomes due only when the subscriber is dilatory in paying the prescribed rate for this service. Hence, it is entirely within a subscriber's control to avoid incurrence of the late fee. However, every subscriber who becomes delinquent incurs the identical pecuniary obligation. This result is consistent with the equitable allocation standard articulated in section 15A(b)(5) of the Act.

The NASD believes that the magnitude of the late fee is reasonable, and that its imposition will offset certain additional costs traceable to collection of delinquent payments from the affected universe of subscribers. Although the new late fee is lower in amount, its imposition will occur more quickly and will continue under the prescribed formula for the duration of the delinquency. Hence, the formulation of the revised late fee is believed sufficient to provide an economic incentive for subscribers to pay NASDAQ Level 1 Service fees in a timely fashion. Based on this rationale, the NASD submits that this late fee satisfies the reasonableness requirement of section 15A(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD asserts that no competitive burden will result from the imposition of the revised late fee on subscribers delinquent in paying the established rate for NASDAQ Level 1 Service. The late fee will apply uniformly to all delinquent subscribers receiving this service through vendors. Incurrence of the late fee is a matter entirely within each subscriber's control and timely payment obviates liability for the fee. Hence, the fee's application will not unfairly burden a subscriber's continued access to NASDAQ Level 1 information. Finally, because the proposed fee addresses delinquent payments by a specified class of subscribers, it has no adverse effect upon any vendor's access to NASDAQ Level 1 quotation information nor upon a vendor's ability to service a particular subscribers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within sixty (60) days of the filling of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 19, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24614 Filed 10-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25040; File No. SR-NYSE-87-34]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating To Opening Price Settlement of Expiring Options on the NYSE Composite Index and the NYSE Beta Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 13, 1987 the Exchange filed a proposed rule change to change the settlement pricing of expiring stock index options to the opening prices on expiration Friday. (*See* SR-NYSE-87-06 and 3/16/87 Letter to Sharon M. Lawson, Branch Chief, SEC, from Daniel P. Odell, Assistant Secretary, NYSE (collectively, the "Temporary Rule Filing") and Release No. 34-24276 (March 27, 1987).) In particular, the Exchange modified the definition of "Current Index Group Value" in Rule 700(b)(17) to permit the Exchange to specify that the value upon exercise of options on the NYSE Composite Index and the NYSE Beta Index on expiration Friday is to be calculated from the opening prices for the constituent stocks on that day. The Exchange made conforming changes to the contract specifications for options on both indexes to make clear that trading ceases on the Thursday before expiration Friday.

the Temporary Rule Filing was effective only with respect to contracts expiring in June, 1987. On April 3, 1987, the Exchange filed a proposed rule change to make permanent the rule changes proposed in the Temporary Rule Filing. (*See*, SR-NYSE-87-11 (the "Permanent Rule Filing").) Thereafter, it became evident that the publication, comment and approval procedures for the permanent Rule Filing would not be completed before the Exchange opened for trading its contracts expiring in July, 1987. Accordingly, on April 10, 1987, the Exchange filed a proposed rule change that extended the Temporary Rule Filing to the July expiration date. (SR-NYSE-87-13.)

On May 15, 1987, the Commission approved the Permanent Rule Filing, but only in relation to contracts expiring in August and September. (Release No. 34-24466.) This was intended to permit the Commission to evaluate the June expiration before deciding on permanent approval. The Exchange subsequently learned that the Commission wished to evaluate the September expiration as well before acting on the Exchange's permanent approval request. Therefore, on August 13, 1987, the Exchange filed another proposed rule change that extended the Permanent Rule Filing to the December expiration date. (SR-NYSE-87-26.) The Commission

approved the extension on August 24, 1987. (Release No. 34-24847.)

The Exchange now understands that the Commission seeks additional time in which to evaluate the September expiration before acting on the Exchange's permanent approval request. Accordingly, the proposed rule change extends to the March, 1988, expiration date the Commission's approval of the permanent filing on a temporary basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule extended by the proposed rule change is to ameliorate the impact of the concurrent expiration of index options and futures on the markets for individual stocks and on the stock market as a whole. The Exchange believes that settling index futures and options based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's opening procedures in handling the accompanying stock volume, is the best strategy for addressing widely-held concerns about the actual and potential impact of the derivative products on the pricing mechanism and integrity of the stock market.

The basis under the 1934 Act for the proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance on the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interest parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act. As noted above, the Commission's most recent approval on a temporary basis of the Exchange's Permanent Rule Filing permitted the Exchange to change the settlement pricing of expiring stock index options to opening prices only for contracts expiring through December, 1987. The Commission's evaluation of the experience with the September expiration cannot be completed before the Exchange opens its January contracts for trading. Accelerated approval of the proposed rule change will permit the Exchange to open its January contracts on a timely basis using expiration valuation based upon the opening prices of the underlying stocks. This will maintain the continuity and order of the Exchange's marketplace.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 16, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-24578 Filed 10-22-87; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Notices of Systems of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notices of systems of records; proposed new systems of records; deletion of two existing systems of records; proposed new and revised routine uses for existing systems of records.

SUMMARY: TVA is republishing notices covering its existing systems of records, most of which contain proposed new or revised routine uses. TVA-2, "Personnel Files—TVA," contains three proposed new routine uses; TVA-13, "Employment Applicant Files—TVA," contains one proposed new routine use; and TVA-1, TVA-2, TVA-3, TVA-5, TVA-6, TVA-7, TVA-8, TVA-9, TVA-11, TVA-12, TVA-13, TVA-14, TVA-15, TVA-16, TVA-18, TVA-19, TVA-21, TVA-22, TVA-23, TVA-26, and TVA-31 each contain a proposed revision to the routine use for litigation. TVA is proposing to revise one routine use related to administrative proceedings contained in TVA-31, "OIG Investigative Records—TVA," and is proposing to consolidate and make uniform the routine uses related to administrative proceedings in TVA-1, TVA-2, TVA-5, TVA-8, TVA-9, TVA-11, TVA-13, TVA-14, TVA-18, TVA-19, TVA-21, and TVA-23. TVA has deleted the notices covering systems of records entitled TVA-17, "Management Appraisal Records—TVA," and TVA-25, "Handicap Services and Planning

Records—TVA," which records have been incorporated into other systems. TVA is also publishing notices covering three proposed systems of records: TVA-32, "Call Detail Records—TVA," TVA-33, "Office of Nuclear Power Call Detail Records—TVA," and TVA-34, "Project/Tract Files—TVA." TVA has also corrected minor typographical, stylistic, and TVA organizational changes in existing systems notices.

DATE: Comments on the new routine uses must be received by November 23, 1987.

ADDRESS: Comments should be sent to Sue E. Wallace, Assistant to the Director of Personnel, Tennessee Valley Authority, 423 Gay Street, Room 227, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Sue E. Wallace at (615) 632-6320.

SUPPLEMENTARY INFORMATION: TVA is publishing notices of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information about those systems. This publication corrects minor typographical, stylistic, and TVA organizational changes in existing systems notices which appeared in the last publication of TVA's systems notices. This publication also reflects organizational changes which occurred since the last publication of TVA's systems notices. None of these typographical, stylistic, or TVA organizational changes requires a report under the Privacy Act or the Office of Management and Budget (OMB) Circular No. A-130. Some of these systems notices contain proposed new or revised routine uses.

New routine uses are being proposed for TVA-2, "Personnel Files—TVA," which would permit (1) TVA to display birthday greetings to employees as a morale builder, (2) TVA or a TVA contractor to use information about an employee contained in his or her personnel file to request information from any pertinent source about an employee, and (3) TVA contractors engaged in evaluating TVA personnel management and benefits or investigating nuclear safety, reprisal, or other TVA personnel practices of policies to have access to information contained in an employee's personnel file. A new routine use is being proposed for TVA-13, "Employment Applicant Files—TVA," which would allow TVA or a TVA contractor to use information about an applicant contained in his or her application file to request information from any pertinent source about the applicant.

A revised routine use for litigation purposes is being proposed for 21 systems. The proposed revision of this routine use would allow disclosure of records in litigation in which TVA is a party or in which TVA provides legal representation to a party as well as in other litigation to allow TVA to respond to process issued under color of authority of a court of competent jurisdiction. The systems notices affected by this proposed revision are TVA-1, "Apprentice Training Record System—TVA"; TVA-2, "Personnel Files—TVA"; TVA-3, "Cooperative Training Program for Construction Craftsmen—TVA"; TVA-5, "Discrimination Complaint Files—TVA"; TVA-6, "Employee Accident Information System—TVA"; TVA-7, "Employee Accounts Receivable—TVA"; TVA-8, "Employee Alleged Misconduct Investigatory Files—TVA"; TVA-9, "Medical Record System—TVA"; TVA-11, "Payroll Records—TVA"; TVA-12, "Employee Travel Advance Records—TVA"; TVA-13, "Employment Applicant Files—TVA"; TVA-14, "Grievance Records—TVA"; TVA-15, "Land Between The Lakes Hunter Records—TVA"; TVA-16, "Land Between The Lakes Register of Law Violations—TVA"; TVA-18, "Employee Supplementary Vacancy Announcement Records—TVA"; TVA-19, "Consultant and Personal Service Contractor Records—TVA"; TVA-21, "Nuclear Quality Assurance Personnel Records—TVA"; TVA-22, "Questionnaire-Farms in Vicinity of Proposed Nuclear Power Plant—TVA"; TVA-23, "Radiation Dosimetry Personnel Monitoring Records—TVA"; TVA-26, "Retirement System Records—TVA"; and TVA-31, "OIG Investigative Records—TVA."

A revised routine use for administrative proceedings is being proposed for TVA-31, "OIG Investigative Records—TVA." The entities to which the records contained in this system may be disclosed is being clarified. In addition, TVA is proposing to consolidate and make uniform the routine uses related to administrative proceedings in 12 systems. The proposed new routine use specifies that TVA may disclose records in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or other similar procedures. It eliminates the need for separate routine uses related to particular procedures. The systems notices affected by this proposed new routine use are TVA-1, "Apprentice Training Record System—TVA"; TVA-2, "Personnel Files—TVA"; TVA-5, "Discrimination Complaint Files—TVA"; TVA-8, "Employee Alleged Misconduct Investigatory Files—TVA"; TVA-9, "Medical Record System—TVA"; TVA-11, "Payroll Records—TVA"; TVA-13, "Employment Applicant Files—TVA"; TVA-14, "Grievance Records—TVA"; TVA-18, "Employee Supplementary Vacancy Announcement Records—TVA"; TVA-19, "Consultant and Personal Service Contractor Records—TVA"; TVA-21, "Nuclear Quality Assurance Personnel Records—TVA"; and TVA-23, "Radiation Dosimetry Personnel Monitoring Records—TVA."

TVA has also deleted two systems notices since the records in these systems have been incorporated into other systems. Specifically, TVA-17, "Management Appraisal Records—TVA," has been deleted because these records are now filed in the system covered by TVA-2, "Personnel Files—TVA," and TVA-25, "Handicap Services and Planning Records—TVA" has been deleted because these records are now filed in the system covered by TVA-9, "Medical Record System—TVA." The deletion of these systems notices does not necessitate a report under the Privacy Act or the OMB Circular.

TVA is also publishing notices covering three proposed systems of records for which new system reports have been submitted to Congress and OMB pursuant to the Privacy Act and the OMB Circular. These systems notices all contain proposed routine uses for which a comment period has been provided. Two of these new systems notices cover telephone call detail records of different organizations within TVA: The Office of Nuclear Power and the Telecommunications Staff of the Division of Property and Services. TVA has requested that OMB waive the 60-day review period for these two systems based on the compelling need to help control long-distance telephone cost. The other new system notice covers the records maintained by TVA's Land Management Branch on acquisition, transfer, and disposal of real property and on related transactions. Records covered by this system notice will be retrievable by individual and business entity names and by tract number and project symbol.

Assuming no comments are received which would necessitate otherwise, TVA will publish all of its systems notices again once the comment and review periods have expired.

Accordingly, as set forth below, TVA gives notice of proposed new systems of records, proposed new and revised routine uses for existing systems, minor typographical, stylistic, and TVA organizational changes in existing

systems notices, and deletion of two existing systems notices.

Table of Contents

TVA-1

SYSTEM NAME:

Apprentice Training Record System—TVA.

SYSTEM LOCATION:

Labor Relations Staff, Tennessee Valley Authority, Knoxville, Tennessee 37902; Division of Personnel, Information Management Systems Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902; Computing Operations Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401; all TVA locations where apprentices are employed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA apprentices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment, qualifications, and evaluation information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Apprenticeship Act of 1937, 50 Stat. 664; TVA Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Bureau of Apprenticeship and Training, the Veterans' Administration, Tennessee Valley Trades and Labor Council, and the State and local government agencies for reporting and evaluation purposes.

To respond to a request from a Member of Congress regarding the status of an apprentice.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA employee: Job description, dates of employment, reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on automated data storage devices, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name, craft, job code, union code, and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained from two to five years in accordance with established TVA record retention schedules and are then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Labor Relations, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; General Aptitude Test Battery scores from State employment security office; references from employers and military and educational institutions; and evaluations from joint committee on apprenticeship.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing and examination material would compromise the objectivity of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

SYSTEM LOCATION:

Division of Personnel, Tennessee Valley Authority, Knoxville Tennessee 37902; Division of Personnel, Information Management Systems Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902; area employment offices in Knoxville, Chattanooga, Muscle Shoals, and Nashville; construction project employment offices; Computing Operations Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401; National Personnel Records Center, St. Louis, Missouri 63118. Security/suitability investigatory files are located separately from other records in this system. Information on education, career counseling, or job performance may be maintained by the TVA organization that provides the training or career counseling or that employs the individual and by Equal Opportunity Staff.

Duplicate or certain specifically temporary information may be maintained by division personnel officers, supervisors, and administrative officers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; various sections of Title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose test results to State employment services.

To a State employment security office in response to a request relating to a former employee's claim for unemployment compensation.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To refer, where there is an indication of a violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source, directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information, as requested, to a prospective employer of a TVA or former TVA employee: job descriptions, dates of employment, and reasons for separation.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employees' Group Life Insurance to Office of Federal Employees' Group Life Insurance.

To transfer information regarding claims for health insurance benefits to health insurance carrier.

To union representatives in exercising their responsibilities under TVA collective bargaining agreements.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA contractors and subcontractors engaged at TVA's direction in studies and evaluation of TVA personnel management and benefits or the investigation of nuclear safety, reprisal, or other matters involving TVA personnel practices or policies.

To provide pertinent information to local school districts and other government agencies in order to study TVA project impacts and to aid school districts in qualifying for assistance under Pub. L. 81–874 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To commemorate the month and day of employee birthday anniversaries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices and microfiche.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Personal History Records:

Nonmicrofilmed records stored at National Personnel Records Center and microfilmed records stored at TVA are destroyed 75 years after birth date of employee or 60 years after date of earliest document in the record if the date of birth cannot be ascertained. Reference copies are destroyed when no longer needed.

Congressional inquiries are retained indefinitely; test records are retained 10 years; occupational register cards are retained 1 year, with the exception of apprentices which are retained for 5 years; some information maintained on magnetic tape is erased after 1 year, records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902. Requests should include the individual's full name, employing division, job title, and date of birth. A social security number is not required but may expedite TVA's response.

In addition, current employees should address inquiries also to their supervisors or personnel officers.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902. In addition, current employees may present requests for access to their supervisors or the personnel officer of the employing division. Requests should include the individual's full name, employing division, job title, and date of birth. A social security number is not required but may expedite TVA's response. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions; former employers; and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-3

SYSTEM NAME:

Cooperative Training Program for Construction Craftsmen—TVA.

SYSTEM LOCATION:

Office of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902; construction project offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in the Cooperative Training Program for Construction Craftsmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; evaluations.

Authority for maintenance of the system: Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State employment services and prospective employers for use in placement of the student.

To request information from a Federal, State, or local agency or from private individuals, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records will be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if information on them is maintained in this system of records should address inquiries to the system manager named above.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the system manager named above.

Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information about them in this system of records should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; instructors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-4

SYSTEM NAME:

Demonstration Farm Records—TVA.

SYSTEM LOCATION:

Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tennessee Valley farmers participating in TVA farm demonstration programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agricultural, investment, income, and labor information. The information in this system is not used in any determination about the rights, benefits, or privileges of an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records may be disclosed to State extension services and the U.S. Department of Agriculture for use in program evaluation and in assistance to program participants.

To request information from a government agency or private individual where such information may be relevant to providing additional assistance under this program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices, punched cards, microfilm and microfiche.

RETRIEVABILITY:

Records are indexed by an assigned code.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. All records are kept in secured facilities and locked when unattended.

RETENTION AND DISPOSAL:

Records are retained for an indefinite period.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals upon whom information is maintained in this system of records are aware of the fact through participation in the program. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name and State and county of the farm.

RECORD ACCESS PROCEDURES:

All information maintained in this system of records has been supplied by the subject individual. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains by State extension services and universities.

TVA-5

SYSTEM NAME:

Discrimination Complaint Files—TVA.

SYSTEM LOCATION:

The following locations of the TVA. Equal Opportunity Staff: Tennessee Valley Authority, Knoxville, Tennessee 37902; Chattanooga, Tennessee 37401; Muscle Shoals, Alabama 35660.

Duplicate copies may be maintained in the files of the TVA division where the complaint originated.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or applicants who have received counseling or filed complaints of discrimination based on race, color, religion, sex, national origin, age, or handicap.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to a decision or determination made by TVA or the Equal Employment Opportunity Commission affecting an individual. The records consist of the initial appeal or complaint, letters or notices to the individual, record of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimonies of witnesses, investigative reports, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd: Executive Order 11478; 42 U.S.C. 2000e–16; 29 U.S.C. 633a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A report of each complaint is made to the Equal Employment Opportunity Commission. If an administrative appeal is filed, the entire file is disclosed to the Equal Employment Opportunity Commission.

To the employee's representative.

To respond to a request from a Member of Congress regarding the status of a complaint.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its equal employment opportunity program or who are providing support services to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are kept in file folders.

RETRIEVABILITY:

Records in this system are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those personnel whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Equal Opportunity, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals who have filed discrimination complaints are aware of that fact. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, the approximate date of their complaint, and their employing organization, if employed.

RECORD ACCESS PROCEDURES:

Individuals who have filed a discrimination complaint have been provided a copy of the record. However, an individual may gain access to the official copy of the complaint record by writing the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals who have filed a discrimination complaint have had an opportunity during the complaint procedure to amend their record. However, request for amendment or correction of items not involving the complaint procedure may be addressed to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA personnel and other records; witnesses.

TVA-6

SYSTEM NAME:

Employee Accident Information System—TVA.

SYSTEM LOCATION:

Division of Occupational Health and Safety, Muscle Shoals, Alabama 35660.

Accident reports may also be maintained in the file of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have sustained a work-related injury or illness or have been involved, as the operator of a TVA vehicle, in a vehicular accident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to the accident, injury, or illness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Occupational Safety and Health Act of 1970, Pub. L. 93–237, 87 Stat. 1024; Executive Order 12196.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Labor as required by the Occupational Safety and Health Act.

To the Office of Workers' Compensation Programs in relation to an individual's claim for compensation.

To respond to a request from a Member of Congress regarding the status of an employee.

To provide information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision

within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on automated data storage devices and in file folders.

RETRIEVABILITY:

Records are indexed by name, date of birth, and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained for five years, and after that period are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Tennessee Valley Authority, Director of Occupational Health and Safety, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, date of birth, and approximate date of injury.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical records; witnesses of accidents and injuries, including appraisers of property damage.

TVA-7

SYSTEM NAME:

Employee Accounts Receivable—TVA.

SYSTEM LOCATION:

Division of the Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902; Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who: Authorize a payment for specified purposes in their behalf; receive overpayment of earnings; receive duplicate payments; are otherwise indebted to TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information concerning indebtedness and repayment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 55; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on punch cards, printouts, invoices, and posting documents.

RETRIEVABILITY:

Records are indexed by payroll number, social security number, badge number, name, or invoice number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Punch cards disposed of in 3 months, printouts in 3 years, invoices in 7 years and posting documents in 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employing organization. Provision of the social security number is not required, but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in the system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA payroll records; TVA disbursement voucher records.

TVA-8

SYSTEM NAME:

Employee Alleged Misconduct Investigatory Files—TVA.

SYSTEM LOCATION:

Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees about whom a complaint of misconduct during employment has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding conduct during employment with TVA which may be in violation of law or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Political Activity Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or investigation number.

SAFEGUARDS:

These records are stored in a locked GSA-approved security container. Access to the records is limited to TVA attorneys and their administrative assistants who have a need for them in the course of TVA business and to other TVA employees whose need is approved by Office of the General Counsel management.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

This system of records is exempt from the requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from subsections (c)(3); (d); (e)(1); (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a (Section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA-9

SYSTEM NAME:

Medical Record System—TVA.

SYSTEM LOCATION:

Division of Medical Services, Tennessee Valley Authority, Chattanooga, Tennessee 37401; all TVA medical facilities; Computing Operations Branch, Chattanooga, Tennessee 37401; National Records Center, St. Louis, Missouri 63118; District Offices, Office of Workers' Compensation Programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for TVA employment, employees, former employees, official visitors, contractual assignees to TVA, interns, externs, employees of TVA contractors, and other Federal agencies who are examined under contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical information pertinent to an individual's employment, official visit, or contractual work with TVA or other Federal agencies, including medical and psychological history, examination, testing, counseling, treatment, and related information; workers compensation claim records; rehabilitation records; and information related to employee participation in the alcohol-drug abuse program.

Medical and psychological information relative to nuclear plant security.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. 7902; Federal Employees' Compensation Act, 5 U.S.C. Chapter 81, 5 U.S.C. Chapter 87 (Medical information relating to life insurance program); 5 U.S.C. 3301; Occupational Safety and Health Act of 1970, Pub. L. 93–237, 87 Stat. 1024, Pub. L. 91–616, Federal Civilian Employee Alcoholism Program and Pub. L. 92–255, Drug Abuse Among Federal Civilian Employees, which are amended in regard to confidentiality of records by Pub. L. 93–282; Public health laws (State and Federal) related to the reporting of health hazards, communicable diseases or other epidemiological information; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Compensation claim records are used for adjudicating claims and providing therapy. Appropriate information is exchanged with physicians, hospitals, and rehabilitation agencies approved by the Office of Workers' Compensation Programs for service to injured employees.

Medical records are used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of medical data to health-related agencies, organizations, or professionals for the purpose of obtaining specialized clinical consultation, compiling vital and health statistics, or conducting biomedical investigations.

Alcohol-drug program records may be exchanged with a physician or treatment center working with an employee, or in accordance with the provisions of Pub. L. 93–282.

Information in the Medical Record System provided to officials of other Federal agencies responsible for other Federal benefit programs administered by Office of Workers' Compensation Programs. Retired Military Pay Centers, Veterans' Administration, Social Security Administration, and private contractors engaged in providing benefits under Federal contracts.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, the issuance of a security clearance, the reporting of an investigation of an employee, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To respond to a request from a Member of Congress regarding an employee.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information regarding claims for health insurance or disability benefits to the health insurance carrier or plan participant.

To request information from a Government agency or private individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its medical program or who are providing support sources to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide information to private physicians and other health care professionals or facilities designated by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, and in file folders.

RETRIEVABILITY:

Records are indexed by name, social security number, date of birth, and employee compensation case number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards. Special instructions issued to medical staff employees assure the confidentiality of medical records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with TVA rules and regulations approved by the National Archivist. Retention schedules specify the length of time various records are kept. Active medical records are kept indefinitely. Inactive files are kept in the Division of Medical Services, TVA, for 6 years following the date of last medical record entry. They are then purged and essential record material is microfilmed. The paper records are destroyed by recycling. Microfilm records are destroyed 34 years from date of filming.

X-rays of employees are microfilmed 20 years after termination of employee and the original destroyed. The microfilm records are destroyed in TVA 20 years from date of filming. X-rays of nonemployees and all dependents are destroyed in TVA 6 years from date of film.

SYSTEM MANAGER(S) AND ADDRESS:

Medical Director, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above or to the medical office at the TVA facility where employed, if a current employee.

Individuals should provide their full name, date of birth, employing organization, and date of last employment, and employee compensation case number, if any. Provision of social security number is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact or address their inquiries to the system manager named above or the medical office at the TVA facility where currently employed.

CONTESTING RECORDS PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical staff; private physicians and medical institutions; Office of Workers' Compensation Programs; TVA personnel records; other health agencies and departments.

TVA-10

SYSTEM NAME:

Employee Statement of Employment and Financial Interests—TVA.

SYSTEM LOCATION:

Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

Original copies may be kept in division directors' offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All TVA employees at TVA grade M-8 and above who submitted a report prior to the enactment of the Ethics in Government Act of 1978; employees at TVA grades M-5, M-6, M-7 in positions designated by the General Manager or a division director as requiring submission of a statement; every TVA consultant who is a "special Government employee"; every TVA personal service contractor who is a "special Government employee" and who is determined to be an "expert" or who is otherwise required to submit a statement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of employment and financial interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222; 18 U.S.C. 208; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To report as requested to the Office of Personnel Management pursuant to Executive Order 10577 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons designated by the General Manager or the Board of Directors to review statements of financial interest.

RETENTION AND DISPOSAL:

Records are retained in accordance with established records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Manager, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system of records are aware of that fact by having filed a statement. However, inquiries may be addressed to the Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902. Requests should include the individual's full name and employing division.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information about them in this system of records should contact the Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

TVA-11

SYSTEM NAME:

Payroll Records—TVA.

SYSTEM LOCATION:

TVA Division of the Comptroller, Knoxville, Tennessee 37902; garnishment files are located at the Office of the General Counsel, Knoxville, Tennessee 37902; duplicate copies of some records may also be maintained in the files of the employing division; National Personnel Records Center, St. Louis, Missouri 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees and personal service contractors selected for certain training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings and other required information to Federal, State, and local taxing authorities as required by law.

To report earnings to the Civil Service Retirement System for members of that system.

To transmit payroll deduction information to financial institutions and employee organizations.

To report earnings to courts when garnishments are served or in bankruptcy or wage earner proceedings.

To report earnings to unions for those crafts on which TVA contributions to union welfare or pension funds are based on earnings. Reports of hours worked are made to unions for those crafts on which such TVA contributions are based on hours worked.

To report earnings to the Department of Housing and Urban Development, State welfare agencies, and State employment security offices where an individual has made a claim for benefit with such agency.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate

agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To disclose to any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employees' Group Life Insurance to Office of Federal Employees' Group Life Insurance.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transfer information regarding claims for health insurance benefits to health insurance carriers.

To TVA contractors and subcontractors engaged in studies and evaluations of TVA payroll and personnel management.

To union representatives exercising their responsibilities under TVA collective bargaining agreements.

To report earnings to the Department of Housing and Urban Development, and State welfare agencies where an individual makes a claim for benefits and to report earnings to State employment security offices in both manual and automated form for use by these offices in determining unemployment benefits.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are primarily indexed by name. They may also be retrieved by reference to employing organization, date of end of pay period, social security or badge number, date of birth, sex, job title.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

File folders are retained for 3 years after termination. Timesheets are retained for 7 years. Payroll registers are retained in active status for 1 year, transferred to TVA record storage for 5 years, and to National Personnel Records Center for an additional 50 years. Magnetic tapes are retained for 1 year after termination.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing organization, and date of last employment. The social security number is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information on them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct information on them in this system of records should contact the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; employee's supervisor for report of hours worked.

TVA-12

SYSTEM NAME:

Employee Travel Advance Records—TVA.

SYSTEM LOCATION:

Division of the Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

Duplicate copies of these records may also be maintained in the files of the employee's division.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees requesting travel advances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, employing organization, date and amount of travel advance, and repayment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5709, and related Federal travel regulations; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer printouts and microfiche.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

These records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employing organization.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA disbursement voucher records; TVA application for travel advance.

TVA-13

SYSTEM NAME:

Employment Applicant Files—TVA.

SYSTEM LOCATION:

Division of Personnel, Employment Branch and Information Management Systems Branch, Tennessee Valley Authority, Knoxville; Tennessee 37902; area and project employment offices; Computing Operations Branch, TVA, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment including former employees seeking reemployment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an individual's application.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source, directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To disclose test results to State employment services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To provide information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices and printouts.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Applications are kept for one year from last indication of interest, with the exception of apprenticeship applications, which are kept for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individual wishing to learn if information on them is maintained in this system of records should address inquiries to Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902, or to the area or project employment office to which application was sent. Requests should include the individual's full name, social security number, date of birth, and approximate date of application.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902, or the area or project employment office to which the application was sent. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; educational institutions, employers, and other references; state employment services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-14

SYSTEM NAME:

Grievance Records—TVA.

SYSTEM LOCATION:

Labor Relations Staff, Tennessee Valley Authority, Knoxville, Tennessee 37902.

Duplicate copies are also maintained in the files of the division concerned with the grievance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees and former employees who have formally appealed to TVA for adjustment of their grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evidence and arguments relevant to the matter giving rise to the grievance and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an employee's grievance.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency, or private individual if necessary to obtain information relevant to a TVA decision within the purposes of this system of records.

To refer, where there is an indication of a violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Labor Relations, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals who have filed grievances are aware of that fact. Inquiries may, however, be addressed to the system manager named above. Requests should include the individual's full name and employing division.

RECORD ACCESS PROCEDURES:

Individuals who have filed a grievance may gain access to the official copy of the grievance record by contacting the system manager named above.

CONTESTING RECORD PROCEDURES:

The contest, amendment, or correction of a grievance record is permitted during the prosecution of that grievance. However, an individual may address requests for amendment or correction of items not involved in prosecution of the grievance to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; statements and testimony of witnesses and related correspondence.

TVA-15

SYSTEM NAME:

Land Between The Lakes Hunter Records—TVA.

SYSTEM LOCATION:

Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231; Computing Operations

Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom hunter use permits are issued and those who apply for participation in managed hunts at Land Between The Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, State hunting license(s) number(s), and information related to the hunts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an applicant.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, or to request information from a private individual to the extent necessary to obtain information relevant to a TVA decision concerning the issuance of a permit to hunt or any other privilege.

To provide hunt information to State agencies concerned with wildlife management practices.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide mailing lists to organizations or contractors cooperating with Land Between The Lakes in activities or events for the purpose of publicizing those activities or events.

To provide mailing lists to an independent Land Between The Lakes support organization for the purpose of soliciting members for the organization.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, card files, and computer printouts.

RETRIEVABILITY:

Records are indexed by name; automated files may be retrieved by any key data element.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Applications for managed hunts are maintained for one year; carbon copies of hunter use permits are maintained two years; and automated records on those permits are maintained five years. Other information may be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address their inquiries to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231. Requests should include the name as listed on the application or hunter use permit or the hunter use permit number.

RECORD ACCESS PROCEDURES:

All information maintained in this system of records has normally been supplied by the subject individual. However, requests for access may be directed to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

TVA–16

SYSTEM NAME:

Land Between The Lakes Register of Law Violations—TVA.

SYSTEM LOCATION:

Land Between The Lakes, Tennessee Valley Authority, Patrol Office, Golden Pond, Kentucky 42231.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons cited or arrested for violation of State or Federal law at Land Between The Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to the investigation and disposition of the violation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 18 U.S.C. 7, 13; Kentucky Revised Statutes 150, Chapter 43, Kentucky Act 1974; Tennessee Public Acts 1972, Chapter 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

NOTIFICATION PROCEDURE:

This system of records had been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

RECORD ACCESS PROCEDURES:

This system of records had been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

CONTESTING RECORD PROCEDURES:

This system of records has been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

RECORD SOURCE CATEGORIES:

This system of records has been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3), (4); (d); (e)(1), (2), (3), (4)(G), (4)(H), (4)(I), (5); (f); (g); and (h) of 5 U.S.C. 552a (Section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

TVA-18

SYSTEM NAME:

Employee Supplementary Vacancy Announcement Records—TVA.

SYSTEM LOCATION:

Office and division personnel offices in Knoxville and Chattanooga, Tennessee, and Muscle Shoals, Alabama; may also be maintained in other offices that issue or receive responses to supplementary vacancy announcements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for placement in positions covered by the supplementary vacancy announcement procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and supporting material submitted by employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11478; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; 5 U.S.C. 3101; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Records are maintained in secured facilities.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system are aware of that fact through filing an application. However, inquiries may be addressed to the name and address to which application was submitted. Requests should include the individual's full name, position applied for, and location of job.

RECORD ACCESS PROCEDURES:

Individuals upon whom records are maintained in this system have supplied all information in this system. However, requests for access may be addressed to the name and address to which application was submitted.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the name and address to which application was submitted.

RECORD SOURCE CATEGORIES:

The individual upon whom the record is maintained.

TVA-19

SYSTEM NAME:

Consultant and Personal Service Contractor Records—TVA.

SYSTEM LOCATION:

Division of Personnel, Employment Branch and Information Management Systems Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902; Computing Operations Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

Payment records are located at these TVA Division of the Comptroller offices: Knoxville, Tennessee 37902; Chattanooga, Tennessee 37401; Muscle Shoals, Alabama 35660.

Records related to personal service contractors employed under the Comprehensive Employment and Training Act of 1973, Pub. L. 93–203, are located at TVA, Office of Natural Resources and Economic Development, Knoxville, Tennessee 37902, and Land Between The Lakes, Golden Pond, Kentucky 42231.

Records on individuals who provide services under a TVA contract with an organization may be kept in the files of the office or division that receives the services.

Duplicate copies of some records may be kept in the files of the employing division.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who provide services to TVA; participants in TVA-State employment programs; individuals who provide services under a TVA contract with an organization; and participants in other special employment programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Division of Personnel maintains contracts, records of the qualifications, performance, and evaluation of the

contractor, and related correspondence. For public service employment program participants, the Division of Personnel maintains information related to job placement such as test scores, interest inventories, and supervisor's evaluations. Payment information is maintained by the Division of the Comptroller.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Comprehensive Employment and Training Act, Pub. L. 93–203, 87 Stat. 839; Executive Order 11222; Executive Order 10450; Executive Order 10577; provisions of 5 U.S.C. applicable to employment with TVA; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To transmit reports as requested to the Office of Personnel Management, pursuant to 5 U.S.C. 3323, Executive Orders 10577 and 10450, and other laws.

To report earnings information to the Internal Revenue Service and the Social Security Administration.

To respond to a request from a Member of Congress regarding the status of a contractor or consultant.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To request information from a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transmit to the appropriate State contracting agency reports of hours worked by participants in the public service employment program, and to request reimbursement.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA consultant or personal service contractor: Job descriptions, dates of employment, and reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by name, social security number, or voucher number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are disposed of periodically as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know if records on them are maintained in the system should address inquiries to the system manager named above. Requests shall include the individual's full name, employing or contracting division, and whether the individual was a participant in the public service employment program. Social security numbers are not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions, former employers, and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process.

This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-21

SYSTEM NAME:

Nuclear Quality Assurance Personnel Records—TVA.

SYSTEM LOCATION:

Division of Nuclear Quality Assurance, Tennessee Valley Authority, Chattanooga, Tennessee 37402.

Copies of records for Quality Assurance Evaluators are maintained in the office of the Director of Nuclear Quality Assurance in Chattanooga.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees involved in quality assurance work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the qualifications of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat. 1233 as implemented at Nuclear Regulatory Commission Regulatory Guide 1.58.

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission or its authorized representatives for inspection or evaluation of TVA Quality Assurance procedures.

To respond to a request from a Member of Congress regarding the status of an employee.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigation and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

These records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Nuclear Quality Assurance, Tennessee Valley Authority, Chattanooga, Tennessee 37402.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name and employing organization.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from subsection (d); (e)(4)(H); (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. The exemption is pursuant to 5 U.S.C. 552a(k)(5) and TVA regulations at 18 CFR 1301.24.

TVA-22

SYSTEM NAME:

Questionnaire—Farms in Vicinity of Proposed Nuclear Power Plant—TVA.

SYSTEM LOCATION:

Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from whom TVA purchases land for proposed nuclear plant, individuals having vegetable gardens, irrigated land, dairy cows, and milk goats within two-mile radius of proposed plant site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to agriculture, milk consumption, water resources, and farm product value.

This information is not used for making determinations about the rights, benefits, or privileges of any individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; National Environmental Policy Act, Pub. L. 91-

190, 83 Stat. 852; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this systems of records is used in developing environmental evaluations and impact statements. Certain relevant but nonsensitive information may be disclosed in these statements. Information may also be used:

In administrative and licensing proceedings including the presentation of evidence and disclosure to opposing counsel in the course of discovery.

To disclose to any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by assigned number and aerial photo number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained indefinitely or for the life of the plant.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained in this system are aware of that fact through response to the questionnaire. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name, farm address, and approximate date of survey.

RECORD ACCESS PROCEDURES:

Individuals on whom information is maintained in this system have supplied all such information. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained.

TVA-23

SYSTEM NAME:

Radiation Dosimetry Personnel Monitoring Records—TVA.

SYSTEM LOCATION:

Division of Nuclear Services, Radiological Health Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and visitors who might be exposed or are exposed to radiation while in TVA installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on the magnitude of exposure at TVA installations, exposure prior to employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233; 10 CFR 19, 20; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission for its use in evaluating TVA hazard control measures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

These records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Radiological Health Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and whether or not a TVA employee.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; TVA personnel conducting radiation monitoring programs.

TVA-24

SYSTEM NAME:

Reforestation, Erosion Control, and Plantation Case History Records—TVA.

SYSTEM LOCATION:

Record Staging Area, Tennessee Valley Authority, Muscle Shoals, Alabama 35660, pending official transfer to Federal Archives, East Point, Georgia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private landowners involved in early TVA-Civilian Conservation Corps tree planting programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forest acreage, performance, and yield information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate agency, whether Federal, State, or local in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on file cards.

RETRIEVABILITY:

Records are indexed by State, county, and name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Building is locked when unattended.

RETENTION AND DISPOSAL:

This information is kept permanently for archival purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals on whom records are maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, State, and county of residence.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should address their inquiries to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; State forestry personnel; TVA surveys.

TVA-26

SYSTEM NAME:

Retirement System Records—TVA.

SYSTEM LOCATION:

Retirement Services Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, retired, and former members of the TVA Retirement System; TVA employees and former employees who are members of the Civil Service Retirement System; designated beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; retirement, benefit, and investment information; related correspondence; and legal documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings to the Internal Revenue Service.

To supply information on coverage to Blue Cross-Blue Shield of Tennessee, Provident Life Insurance Company, and other insurance carriers.

To disclose information to actuarial firms for valuation and projecting benefits.

To disclose information to the Medical Board of the TVA Retirement System for determinations related to disability retirement.

To certify insurance status to the Office of Personnel Management and the Office of Federal Employees' Group Life Insurance.

To respond to a request from a Member of Congress regarding the status of a system member.

To request information from a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to a TVA decision within the purpose of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the issuance of any benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide the TVA Retirees Association, retired members of the TVA Retirement System, and retired former TVA employees who are covered by the Civil Service Retirement System, with names and mailing addresses of other retired members and retired employees.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, ledgers, and in file folders.

RETRIEVABILITY:

Records are indexed by name, sex, date of birth, address, social security number, active member number, retirement number, or salary.

SAFEGUARDS:

Records in this system are maintained in locked files or safes, in secure facilities. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retention periods vary from two years to permanent depending on the nature of the information and the medium in which they are stored.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Retirement Services Branch, Division of the Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name and date of birth. The social security number is not required but will expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals wishing to correct or amend information maintained on them in this system should address inquiries to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel and payroll records.

TVA-27

SYSTEM NAME:

Test Demonstration Farm Records—TVA.

SYSTEM LOCATION:

Division of Technology Development, National Programs Branch, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farmers located outside the Tennessee Valley participating in TVA demonstration farm programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agricultural, income, investment, labor, and food data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To request information from a Government agency or private individual where such information may be relevant to providing additional assistance under this program.

To disclose to State extension services and the U.S. Department of Agriculture for use in program evaluation and in assistance to program participants.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices, cards, and printouts.

RETRIEVABILITY:

Records are indexed by an assigned number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities and locked when unattended.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Technology Development, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager. Individuals should provide their full name, county, and State in which individual participated in a TVA farm demonstration program.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from the individual to whom the record pertains by State extension services and universities.

TVA-28

SYSTEM NAME:

Woodland Resource Analysis Program Input Data—TVA.

SYSTEM LOCATION:

Office of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902; Computing Services Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private landowners, agencies, and corporations owning woodlands in Valley region and participating in TVA woodland resource management demonstration program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal, financial, and land resource information pertinent to woodland resource planning. The information in this system is not used by TVA in the determination about the rights, benefits, or privileges of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Evaluated information is supplied to State forestry personnel for use in assisting the landowner.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed by computer run number by State.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are retained for 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of the Office of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager. Individuals should provide their full name, State of residence, and the calendar year(s) of participation in the program.

RECORD ACCESS PROCEDURES:

Individuals on whom records are maintained have been provided copies of all information in that record. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains provides the information to State forestry personnel. The information is evaluated by TVA and returned to the State forestry personnel who utilize the information in evaluated form to assist the landowner.

TVA-29

SYSTEM NAME:

Electricity Use, Rate, and Service Study Records—TVA.

SYSTEM LOCATION:

Division of Conservation and Energy Management, Tennessee Valley Authority, Chattanooga, Tennessee 37402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals residing in households which are participating in electricity use, rate, and service studies including those receiving electricity conservation assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about an individual's income, employment, family size, characteristics of his dwelling including type of heating and cooling systems and number and kind of appliances, and other characteristics of study participants relevant to patterns of residential electrical use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To distributors and contractors assisting TVA in the study.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by an identification number assigned to each household.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Survey information will be retained until completion of the program and for two years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Conservation and Energy Management, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals about whom information is maintained in this system of records are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains.

TVA-30

SYSTEM NAME:

Land Between The Lakes Mailing Lists—TVA.

SYSTEM LOCATION:

Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons using, visiting, or having an interest in the activities, programs, or facilities of Land Between The Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, address, and information about their Land Between The Lakes associated interests, activities, or program participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order No. 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide mailing lists to organizations or TVA contractors cooperating with Land Between The Lakes in activities or events for the purpose of publicizing those activities or events.

To provide mailing lists to an independent Land Between The Lakes support organization for the purposes of soliciting members for the organization.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on card files, automated data storage devices, and computer printouts.

RETRIEVABILITY:

Records are primarily indexed by name and identification code. They may also be retrieved by reference to interests, organization, or address elements.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Access facilities are secured through physical, administrative, and system-based safeguards.

RETENTION AND DISPOSAL:

Records are kept for the period of time the individual is to receive mailings.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address their inquiries to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231. Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, organization representatives, and TVA employees.

TVA-31

SYSTEM NAME:

OIG Investigative Records—TVA.

SYSTEM LOCATION:

Office of the Inspector General, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG) or who provide information in connection with such investigations, including but not limited to: Employees, former employees, current or former contractors and subcontractors and their employees, consultants, and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (e.g., coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; and TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of a TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee, the issuance of a security clearance, the conduct of a background or other investigation, or other matter within the purposes of this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as

determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

These records are retained in accordance with TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24. /.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3); (d); (e)(1), (4)(G), (4)(H), and (4)(I); and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA-32

SYSTEM NAME:

Call Detail Records—TVA.

SYSTEM LOCATION:

Data Center, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees, contractor personnel, and other individuals who make telephone calls from or charge telephone calls to TVA telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of TVA telephones; records relating to long distance telephone calls charged to TVA; records indicating assignment of telephone numbers and authorization numbers; records relating to locations of TVA telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

To respond to a request from a Member of Congress regarding an individual.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To a telecommunications company as well as to other TVA contractors providing telecommunications support to permit servicing the account.

To TVA contractors engaged at TVA's direction in investigations of abuse of TVA telephone service or other related issues.

To TVA contractors and contractor personnel to determine individual responsibility for telephone calls.

To TVA contractors in connection with amounts due TVA for telecommunications services provided to them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are retrieved by name, authorization number, or telephone number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Automated data is secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Staff, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to Chief, Telecommunications Staff, Tennessee Valley Authority, Chattanooga, Tennessee 37401. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Chief, Telecommunications Staff, Tennessee Valley Authority, Chattanooga, Tennessee 37401. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to Chief, Telecommunications Staff, Chattanooga, Tennessee 37401.

RECORD SOURCE CATEGORIES:

TVA Telecommunication Control System; telecommunications companies with which TVA contracts for telephone service; telephone and authorization number assignment records; results of administrative inquiries relating to

assignment of responsibility for placement of specific long distance calls.

TVA-33

SYSTEM NAME:

Office of Nuclear Power Call Detail Records—TVA.

SYSTEM LOCATION:

Emergency Operations Center, Computer Room, 1101 Market Street, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees, contractor personnel, and other individuals who make telephone calls from or charge telephone calls to TVA telephones located at TVA nuclear plant sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of TVA telephones at TVA nuclear plant sites; records relating to long distance telephone calls charged to TVA telephones at TVA nuclear plant sites; records indicating assignment of telephone numbers and authorization numbers at TVA nuclear plant sites; records relating to locations of TVA telephones at TVA nuclear plant sites.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

To respond to a request from a Member of Congress regarding an individual.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To a telecommunications company as well as to other TVA contractors providing telecommunications support to permit servicing the account.

To TVA contractors engaged at TVA's direction in investigations of abuse of TVA telephone service or other related issues.

To TVA contractors and contractor personnel to determine individual responsibility for telephone calls.

To TVA contractors in connection with amounts due TVA for telecommunications services provided to them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are retrieved by name, authorization number, or telephone number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Automated data is secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Nuclear Services, 1101 Market Street, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the site director of the TVA nuclear plant from which the telephone calls were placed or to which the telephone calls were charged. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the site director of the TVA nuclear plant from which the telephone calls were placed or to which the telephone calls were charged. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the site director of the TVA nuclear plant from which the telephone calls were placed or to which the telephone calls were charged. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD SOURCE CATEGORIES:

Station message detail recording systems associated with telecommunications equipment at TVA nuclear plant sites; telecommunications companies with which TVA contracts for telephone service; telephone and authorization number assignment records; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

TVA-34

SYSTEM NAME:

Project/Tract Files—TVA.

SYSTEM LOCATION:

Land Management Branch Files, Office Services Support Branch Records Center, and Chattanooga Data Center, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or business entities from/to whom TVA is in the process of or has (1) acquired, transferred, or sold land or landrights, (2) made payment for construction, maintenance, or other damage to real property, or (3) made payment for relocation assistance. A project/tract file may name more than one individual and/or business entity involved in a transaction. (The system records that pertain to individuals and reflect personal information are subject to the Privacy Act. The system also contains records that are not subject to

the Privacy Act. Noncovered records include public information and records on corporations and other business entities.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Maps, property descriptions, appraisal reports, and title documents on real property; reports on contracts and transaction progress; contracts and options; records of investigations, claims, and/or payments related to land transactions, damage restitution, and relocation assistance; related correspondence and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Pub. L. 87–852, 76 Stat. 1129; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The respond to a request from a Member of Congress regarding an individual.

To lienholders as necessary to secure subordinations or releases of liens or to protect lienholder rights.

To county clerk and register of deeds offices to document and put of record the title acquired by TVA.

To landowners, prospective landowners, claimants, or trespassers to establish or cure titles, to resolve encroachments, to resolve boundary disputes, or to resolve questions about easement rights or the application of Section 26a of the TVA Act, 16 U.S.C. 831y–1.

To contractors to secure appraisals and title abstracts.

To request information from a Federal, State, or local agency or from private individuals as necessary to obtain information relevant to a TVA decision to acquire or dispose of property or to pay claims or make payments related to land transactions, damage restitution, and relocation assistance.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide to the appropriate entity whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To report any required information to Federal, State, and local taxing authorities as required by law.

To genealogical researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years to establish historical records.

To archaeological researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years to reconstruct historical settings.

To respond to a request from a Member of Congress regarding the status of a matter relating to a specific project or tract.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on registers, index and aperture cards, microfilm, in file folders, and/or on automated data storage devices.

RETRIEVABILITY:

Records are primarily indexed by tract number and project symbol. Records may also be retrieved by cross-index reference to individual and business entity names.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land and Economic Resources, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the Chief, Land Management Branch, Tennessee Valley Authority, Norris, Tennessee 37828. Requests should include the individual's full name and, to the extent known, any project/tract identifying information such as the project name, tract number, address, or related data.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Chief, Land Management Branch, Tennessee Valley Authority, Norris, Tennessee 37828. Requests should include the individual's full name, and to the extent known, any project/tract identifying information such as project name, tract number, address, or related data. Access will be granted only to individually segregable personal information about the requester and to segregable nonpersonal information in accordance with TVA regulations on release of records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the Chief, Land Management Branch, Tennessee Valley Authority, Norris, Tennessee 37828.

RECORD SOURCE CATEGORIES:

Public records and directories; landowners, tenants, and other individuals and business entities (including financial institutions) having an interest in or knowledge related to land ownership, appraisal, or title history; TVA personnel and contractors including independent appraisers and commercial title companies.

W.F. Willis,

General Manager.

[FR Doc. 87–24513 Filed 10–22–87; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Availability of Funds for Research Studies To Determine the Safety Impact of the 65 mph Speed Limit

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of grant availability.

SUMMARY: The National Highway Traffic Safety Administration announces that competitive applications for grants are being accepted to conduct research to determine the safety impact of raising the speed limit to 65 miles per hour on rural interstate highways.

DATE: Applications must be submitted on or before December 1, 1987.

ADDRESS: Applications must be submitted to the attention of Mr. Thomas Stafford, Director, Office of Contracts and Procurement, National Highway Traffic Safety Administration, 400 7th Street, SW., Room 5301, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. James Auten, Office of Contracts and Procurement, National Highway Trafic Safety Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-9559.

Program Background and Objectives: The research sought under this program is intended to supplement other NHTSA research that deals with the new 65 MPH speed limit. This supplemental research will be carried out independently of NHTSA and will focus on analysis of available data to determine the effect of the new speed limit on crashes and vehicle speeds. NHTSA data files (e.g., Fatal Accident Reporting System) will be made available upon request. This research will determine the safety impact of the new speed limit on 65 mph roads as well as non-65 MPH roads that may have experienced a "spillover" effect. Another variable of important to be considered is vehicle type (e.g., car vs truck).

This research will be supported by one-year grants to not more than four grantees, not to exceed a total of $150,000. Each grant will be independent and no one grant will exceed $40,000. Each grant will commence no later than February 1, 1988. Each grantee will prepare a final report documenting the safety impact of the 65 MPH speed limit. Final reports will be submitted to NHTSA by December 13, 1988.

Eligibile Applicants: Eligible applicants are States, interstate agencies and non-profit institutions.

Applications must be submitted on Standard Form 424 (an original and five copies must be submitted) and include:

1.A A description of the research to be pursued including:

(i) The method or methods that will be used.

(ii) The sources of data that will be used.

(iii) The types of data analyses that will be carried out and how they will address the 65 MPH safety impact issue.

2. A list of those individuals responsible for the conduct of the research, their qualifications, and the role each will play,

3. A complete budget for the period of this research, to include the grantee's shared cost, and

4. A description of the Applicants' previous or on-going efforts that relate to this type of research

Review Process: All proposals will be reviewed and evaluated by NHTSA staff to determine the applicant's understanding of the problem, the applicant's qualifications, the suitability of the proposed research plan, and evidence of the applicant's capability to effectively carry out the project on schedule.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Project Management: An agreement will be reached with each grantee following the award of the grant to assure that, to the maximum degree possible, there is not undue duplication of research.

Issued on: October 19, 1987.

Michael M. Finkelstein,

Associate Administration for Research and Development.

[FR Doc. 87-24537 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-59-M

Public Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research, and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on December 3, 1987, beginning at 10:00 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by November 19, 1987. If sufficient time is available, questions received after the November 19 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by November 19, and the issues to be discussed, will be mailed to interested persons on November 27, 1987, and be available at the meeting.

ADDRESS: Questions for the December 3 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on December 3, 1987. The meeting will begin at 10:00 a.m. (please note the time change), and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on: October 19, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-24538 Filed 10-22-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dte: October 16, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection

requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545–0129
Form number: 1120–POL
Type of review: Resubmission
Title: U.S. Income Tax Return for Certain Political Organizations
Description: Form 1120–POL is used by certain political organizations to report the tax imposed by section 527. The form is used to designate principal campaign committees that are subject to a lower rate of tax under section 527(h). IRS uses this information to determine whether the tax is being properly reported.
Respondents: Non-profit institutions, Small businesses or organizations
Estimated burden: 12,497 hours.
Clearance officer: Garrick Shear (202) 535–4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87–24560 Filed 10–22–87; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

[Delegation Order No. 209 (Rev. 3)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The delegation order authorizes the appropriate officials to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level, to designate a Tax Matters Partner for a partnership or a Tax Matters Person for an S corporation, to sign the notice of final partnership of S corporation administrative adjustment and enter into and approve written agreements with partners or shareholders with respect to the determination of partnership or S corporation items. The text of the order appears below and extends the authority to additional appropriate officials in service/compliance centers and districts.

EFFECTIVE DATE: October 28, 1987.

FOR FURTHER INFORMATION CONTACT: Bonnie D. Bledsoe, OP:EX:C:T, 1111 Constitution Avenue, NW., Room 2514, Washington, DC 20224, 202–566–6595 (not a toll free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1987.

Donald Anderson,

Director, Office of Coordinated Examinations.

Order No. 209 (Rev. 3)

Effective date: October 28, 1987.

Delegation of Authority in Partnership and S Corporation Matters.

Pursuant to the authority vested in the Commissioner of Internal Revenue by IRC 6223, 6224, 6231(a)(7), 6232, 6243, and 6244, and Treasury Department Order 150–10:

1. Authority to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level with respect to a partnership or subchapter S item is delegated to Revenue Agents (grade GS–11 and higher).

2. Authority to sign the notice of final partnership or S corporation administrative adjustment is delegated to:

a. Chiefs and Associate Chiefs of Appeals Offices;

b. Appeals Team Chiefs as to their respective cases;

c. Appeals Officers in service centers/Austin Compliance Center;

d. Revenue Agents (Reviewers), (grade GS–11 and higher), in Examination Division or in Office of Compliance, Assistant Commissioner (International); and

e. Revenue Agents (grade GS–11 and higher) in service centers/Austin Compliance Center.

3. Authority to enter into and approve a written settlement agreement with one or more partners or shareholders with respect to the determination of partnership or subchapter S items for such partnership or S corporation taxable year is delegated to:

a. Chiefs and Associate Chiefs of Appeals Offices;

b. Appeals Team Chiefs as to their respective cases;

c. Appeals Officers in service centers/Austin Compliance Center.

d. Revenue Agents (Reviewers) (grade GS–11 and higher), in Examination Division or Office of Compliance, Assistant Commissioner (International) and

e. Revenue Agents (grade GS–11 and higher) in service centers/Austin Compliance Center.

4. Authority to designate a Tax Matters Partner with respect to a partnership or a Tax Matters Person for an S Corporation is delegated to:

a. Chiefs and Associate Chiefs of Appeals Offices;

b. Appeals Team Chiefs, as to their respective cases; and

c. Group Managers in Examination Division.

5. To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

The authority delegated herein may not be redelegated.

Delegation Order No. 209 (Rev. 2), effective May 12, 1986, is hereby superseded.

Approved:

Charles H. Brennan,

Deputy Commissioner (Operations).

Date: October 1, 1987.

[FR Doc. 87–23565 Filed 10–22–87; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Performance Review Board Membrs

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATE: October 23, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Hoxie (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 485–2617

or

Mr. John Welch (Co-Executive Secretary), Chief, Foreign and Domestic Personnel Policy Staff, Office of Personnel, Voice of America, U.S. Information Agency, 300 C Street, SW., Washington, DC 20547, Telephone: (202) 485–8732

SUPPLEMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform

Act of 1978 (Pub. L. 95–454), the following list supersedes the U.S. Information Agency Notice (51 FR 44708, December 11, 1986):

Chairperson: Associate Director for Management—Woodward Kingman (Presidential Appointee)

Deputy Chairperson: Director, Voice of America—Richard Carlson (Presidential Appointee)

Deputy Director, Voice of America—Ambassador Robert Barry (Senior Foreign Service)

Career SES Members:

Deputy Director, Press and Publications Service—Daniel S. Campbell

Director of Programs, Voice of America—Sidney A. Davis

Director for Projects Management, Office of Enginering and Technical Operations, Voice of America—Robert E. Kamosa

Executive Director, Bureau of Educational and Cultural Affairs—Thomas G. Leydon

Director, Office of Personnel—Harlan F. Rosacker

Director, Office of the Comptroller—Stanley M. Silverman

Alternate Career SES Members:

Director, Exhibits Service—William K. Jones

Director, Office of Management and Program Services—Vincent R. Lauria

Deputy for Systems Engineering, Office of Engineering and Technical Operations, Voice of America—Ronald Linz

This supersedes the previous U.S. Information Agency Notice (51 FR 44708), December 11, 1986).

Woodward Kingman,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 87–24522 Filed 10–22–87; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 205
Friday, October 23, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

October 13, 1987.

FCC To Hold Open Commission Meeting, Tuesday, October 20, 1987

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, October 20, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: In the Matter of Use of Certain Generally Accepted Accounting Principles in Part 32 of the Commission's Rules. Summary: The FCC will consider whether to adopt a Memorandum Opinion and Order amending our Rules regarding the use of new pension accounting procedures promulgated by the Financial Accounting Standards Board, and the amortization of debt refinancing and other costs associated with reacquired debt over the life of a replacement debt issue.

Mass Media—1—Title: Resolution of Interference between UHF channels 14 and 69 and Adjacent-channel Land Mobile Operations. Summary: The Commission will consider the adoption of (a) Notice of Proposed Rule Making on proposed technical criteria regulating objectionable interference from television service on channels 14 and 69 to each adjacent-band land mobile operations and (b) a Notice of Inquiry soliciting comment on the use of new and existing vacant allotments on channels 14 and 69.

Note.—The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

Mass Media—2—Title: Amendment of Part 73 Relating to Call Sign Assignments for Broadcast Stations (MM Docket No. 87-11). Summary: The Commission will consider whether to amend the rules regarding call sign assignments.

Mass Media—3—Title: Petitions for Reconsideration and Clarification of Commission's Indecency Enforcement Standards, filed by Action for Children's Television, *et al*, and the National Association of Broadcasters. Summary: The Commission will consider the above-referenced Petitions with respect to its decisions, adopted on April 16, 1987, involving: *Infinity Broadcasting Corporation of Pennsylvania*, licensee of Station WYSP(FM), Philadelphia, Pennsylvania; *Pacifica Foundation, Inc.*, licensee of Station KPFK(FM), Los Angeles, California; and *The Regents of The University of California*, licensee of Station KCSB-FM, Santa Barbara, California.

Mass Media—4—Title: Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations. Summary: The Commission will consider a Further Notice of Proposed Rule Making to address certain issues relating to children's television.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, FCC Office of Congressional and Public Affairs, telephone number (202) 632-5050.

Issued: October 19, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24700 Filed 10-21-87; 2:02 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:35 a.m. on Tuesday, October 20, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 21, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-24689 Filed 10-21-87; 2:01 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, October 27, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Danbury Bank, Danbury, Texas (2593) (Memo dated October 8, 1987)

Audit Report re:
Heritage National Bank, Richardson, Texas (2601) (Memo dated October 8, 1987)

Audit Report re:
Omaha Consolidated Office, Cost Center—303 (Memo dated September 30, 1987)

Audit Report re:
Costa Mesa Consolidated Office, Cost Center—601 (Memo dated September 30, 1987)

Audit Report re:
San Juan Consolidated Office, Cost Center—501 (Memo dated October 8, 1987)

Audit Report re:
Enforcement Action System Audit Report (Memo dated September 30, 1987)

Audit Report re:
Audit of Real Estate Owned Assets—Puerto Rico Consolidated Office (Memo dated August 31, 1987)

Discussion Agenda:

Memorandum regarding the Corporation's position relative to allowing assisted banks to bid for failing or failed banks.

Memorandum and resolution re: Proposed amendment to the Corporation's rules and regulations in the form of new Part 324, entitled "Agricultural Loan Loss Amortization," which amendment would implement Title VIII of the Competitive Equality Banking Act of 1987 by permitting agricultural banks to amortize losses on qualified agricultural loans.

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments: (1) Clarify and revise certain definitions; (2) reserve the authority of the Corporation with respect to the definitions of "primary capital" and "secondary capital; " (3) specify that the terms and conditions to which capital instruments are subject must be consistent with safe and sound banking practices; and (4) limit the circumstances in which the Corporation will not approve a proposed merger transaction solely because the resulting entity does not meet the Corporation's minimum capital requirement.

Memorandum and resolution re: Final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Banking Practices," which amendments, with respect to securities activities of subsidiaries of insured nonmember banks and the affiliate relationships of insured nonmember banks with securities companies, concern: (1) The use of a common name or logo; (2) the requirement for separate entrances; and (3) disclosure requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: October 20, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–24690 Filed 10–21–87; 2:01 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, October 27, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: October 20, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–24691 Filed 10–21–87; 2:01 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, October 28, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–24651 Filed 10–21–87; 11:12 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 28, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed Federal Reserve System historical program.
2. Proposed 1987 Private Sector Adjustment Factor for priced services.

Discussion Agenda

3. Proposed 1988 fee schedules for Federal Reserve check collection automated clearing house, wire transfer of funds, and net settlement, definitive safekeeping, noncash collection, and book-entry securities services.
4. Proposed amendment to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to implement the Competitive Equality Banking Act of 1987 to permit state member agricultural banks to

amortize losses on qualified agricultural loans.

5. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: October 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–24652 Filed 10–21–87; 11:12 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 52, No. 205
Friday, October 23, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400002, FRL-3183-9]

Toxic Chemical Release Reporting; Community Right-To-Know

Correction

In proposed rule document 87-12588 beginning on page 21152 in the issue of Thursday, June 4, 1987, make the following corrections:

PART 372—[CORRECTED]

§ 372.45 [Corrected]

The table in § 372.45(a) should be corrected as follows:

1. On page 21170, in the second column, in the 17th line from the bottom, "115-52-2" should read "115-32-2".

2. On page 21171, in the second column, in the 29th line, "764-01-07" should read "7647-01-0", and in the 14th line from the bottom, "624-85-9" should read "624-83-9".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51695; FRL-3274-5]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-23304 beginning on page 37836 in the issue of Friday, October 9, 1987, make the following corrections:

1. On page 37836, in the third column, under *P 87-1820*, in the second line, "Polyoxyalkylate" was misspelled.

2. On page 37837—

a. In the first column, under *P 87-1827*, in the third line, after *Chemical.*, insert "(G)"; and in the fifth line, "salts" was misspelled.

b. In the same column, under *P 87-1831*, in the fifth line, "ink or" should read "ink on".

c. In the second column, under *P 87-1837*, in the fifth line, "2-methyl-e-propenoate," should read "2-methyl-2-propenoate,".

3. On page 37838—

a. In the first column, under *P 87-1848*, in the fifth line, "Import" was misspelled.

b. In the third column, under *P 87-1868*, in the ninth line, "<100 parts per million" should read ">100 parts per million".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51696; FRL-3275-4]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-23447 beginning on page 37833 in the issue of Friday, October 9, 1987, make the following corrections:

On page 37834, in the third column—

1. Under **P 87-1881**, in the last two lines, "Non-sensitizer" was misspelled.

2. Under **P 87-1882**, in the 7th line, "polyurethanes" was misspelled; and in the 15th line, "Non/Mutagenic;" should read "Non-mutagenic;".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/55; FRL-3273-1]

Initiation of Special Review; Oxydemeton-Methyl

Correction

In notice document 87-22919 beginning on page 37248 in the issue of Monday, October 5, 1987, make the following corrections:

1. On page 37248—

a. In the first column, under **DATE:**, in the last line, the date should read "January 4, 1988".

b. In the second column, in the last paragraph, in the first line, "This" should read "The".

c. In the third column, in the fifth line, "of" should read "or".

2. On page 37249—

a. In the second column, in the last paragraph, in the first line, remove the period between "A" and "two"; and in the second line, "by" should read "to".

b. In the third column, in the fifth line, "has" should read "had".

3. On page 37250, in the second column, in paragraph ii., in the seventh line, "three" should read "these"; and in the last line, "months." should read "months).".

4. On page 37251, in the second column, in the ninth line, "hematology" was misspelled.

5. On page 37253—

a. In Table 2, the fifth and sixth columns of the fourth entry should read ".00003-.0005[5]" and "179-2975[5]".

b. In the second column, in the 13th line, "associates" should read "associated".

6. On page 37256—

a. In the second column, in paragraph e., in the first line, "of" should read "on".

b. In the third column, in the last paragraph, in the eighth line, the date should read "January 4, 1988.".

7. On page 37257, in the third column, in paragraph (16), in the second line, "*Metasystox-®*" should read "*Metasystox-R®*".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51694; FRL-3268-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 87-22149 beginning on page 36096 in the issue of Friday, September 25, 1987, make the following corrections:

1. On page 36097, in the second column—

a. In the second line, "LC^{T250}" should read "LC_{50}".

b. In the third line, "EC^{T250}" should read "EC_{50}".

2. On page 36098—

a. In the first column, under **P 87-1772**, in the eighth line, "1,1≠-methylene" should read "1,1'-methylene".

b. In the third column, under **P 87-1789**, in the third line, "sulfonyl" was misspelled.

3. On page 36099, in the second column, under **P 87-1800**, in the second line, "Phenol" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59833; FRL-3268-3]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

Correction

In notice document 87-22148 appearing on page 36100 in the issue of Friday, September 25, 1987, make the following correction:

In the second column, under **Y 87-253**, in the fourth line, "acide" should read "acids".

BILLING CODE 1505-01-D

Federal Register

Friday
October 23, 1987

Part II

Federal Communications Commission

47 CFR Part 73

Radio Broadcasting Services; Revised FM Table of Allotments; Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 80-90]

Radio Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Revised FM Table of Allotments Implementing BC Docket No. 80-90.

SUMMARY: This *Public Notice* announces the release of the revised FM Table of Allotments § 73.202 of the Commission's Rules) reflecting the reclassification of FM allotments resulting from BC Docket 80-90. The revision of the Table implements BC Docket 80-90 and reflects the reclassification of Class B/C stations based on their existing or proposed facilities. The revised Table lists the actual community of license and the class of the channel next to its numerical designation.

EFFECTIVE DATE: October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Allocations branch, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Federal Communications Commission.

William J. Tricarico,

Secretary.

Radio broadcasting.

Part 73 of Title 47 of the CFR is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. The table in § 73.202(b) is revised to read as follows:

§ 73. 202 Table of allotments.

* * * * *

(b) *Table of FM Allotments.*

ALABAMA

	Channel No.
Abbeville	232A
Albertville	286C
Alexander City	291C1
Andalusia	251C1, 284A
Anniston	263C
Arab	224A
Ashland	237A
Athens	282C
Atmore	281C
Auburn	249A
Bay Minette	288A, 293A
Birmingham	229C, 233C, 243C, 258C, 264C, 295C, 299C
Brewton	292A
Brundidge	234A
Butler	228A
Camden	272A

ALABAMA—Continued

	Channel No.
Carrollton	231C
Chatom	291A
Chickasaw	252A
Citronelle	270A
Clanton	249A
Cordova	225A
Cullman	221A, 266C
Dadeville	247A
Decatur	245C, 271C1
Demopolis	292A
Dothan	238C, 259C1, 273A
Elba	266A
Enterprise	245C, 294C
Eufaula	224A
Eutaw	282A
Evergreen	228A
Fairhope	221A
Fayette	251C1
Florence	241A, 297C
Fort Mitchell	252A
Fort Rucker	226A
Gadsden	279C
Geneva	228A
Greenville	232A, 240A
Guntersville	240A
Haleyville	224A
Hamilton	221A
Homewood	247A
Huntsville	236C2, 256C
Jackson	285A
Jasper	273C
Linden	275A, 296A
Marion	280A
Mobile	225C, 235C, 241C, 248C, 260C
Monroeville	257A
Montgomery	222C, 241A, 255C, 270C, 277C
Muscle Shoals	288A
Oneonta	249A
Opp	272A
Orange Beach	289A
Oxford	250A
Ozark	280A, 285A
Phenix City	261A
Prattville	237A
Reform	269A
Roanoke	272A
Rogersville	230A
Russellville	249A
Scottsboro	252A
Selma	261A, 265A, 287C2
Sheffield	292A
Stevenson	269A
Sylacauga	252A
Talladega	224A, 248A
Thomasville	237A
Trinity	223A
Troy	289C
Tuscaloosa	224A, 239C1, 288A
Tuscumbia	262C
Tuskegee	240A
Union Springs	265A
Vernon	293A
Winfield	290A
York	257A

ALASKA

	Channel No.
Anchorage	225C, 247C1, 251C1, 255C1, 263C2, 267C, 271C, 276A, 281C1, 287C1, 293C, 298C
Bethel	261A, 300A
College	280A
Cordova	265A
Delta Junction	228A
Fairbanks	240A, 251C1, 266C2, 273C1, 284C2
Haines	*272A
Homer	278C
Houston	232A
Juneau	264C2, 274C, 282A, 286C2, 292A
Kenai	261A
Ketchikan	290C2, 294C2
Kodiak	261A, 268C2

ALASKA—Continued

	Channel No.
Naknek	265A
Nome	262A
North Pole	262C1
Palmer	239C1
Petersburg	*265A
Seward	276A
Sitka	284C2
Soldotna	243C, 269A
Wasilla	259C1
Wrangell	*269A
Yakutat	280A

ARIZONA

	Channel No.
Ajo	252A
Apache junction	296A
Arizona city	292A
Benson	249A
Bisbee	221A
Buckeye	295A
Bullhead City	274C
Casa Grande	288A
Chandler	300C
Chinle	297A
Claypool	288A
Clifton	271C
Comobabi	*276A
Coolidge	280A
Cottonwood	240A
Douglas	237A
Eager	223C
Flagstaff	225C, 230C, 248C, 275C2
Glendale	222C, 278C
Globe	247A, 262C
Green Valley	221A, 246A
Holbrook	221A
Kearny	286A
Kingman	234C, 260C1, 290C
Lake Havasu City	266C, 286C2
Marana	252A
Mesa	284C, 227C
Miami	252A
Nogales	252A
Oracle	276A
Oraibi	252A
Oro Valley	248A
Page	228A
Paradise Valley	290A
Parker	257A
Payson	266C, 282C
Phoenix	233C, 238C, 245C, 254C, 260C, 268C, 273C
Pinetop	294C
Prescott	256C, 271C
Prescott Valley	292A
Quartzsite	232A
Safford	231C1
St. Johns	239C
San Carlos	279A
Scottsdale	264C
Sedona	261A, 298C
Show Low	228A, 243C
Sierra Vista	265A, 269A
Springerville	269A
Sun City	292A
Tempe	250C
Thatcher	256C
Tuba City	250A
Tucson	225C, 229C, 235C, 241C, 258C, 281A, 298C
Tusayan	221A
Wickenburg	288A
Willcox	252A
Williams	244A
Window Rock	276A
Winslow	236C, 286C
Yuma	226C, 236C2, 265A

ARKANSAS

	Channel No.
Arkadelphia	265A
Ashdown	221A, 280A
Augusta	249A
Bald Knob	296A
Barling	233A
Batesville	226C
Beebe	268A
Bella Vista	293A
Benton	296A
Bentonville	252A
Berryville	296A
Blytheville	242C
Booneville	221A
Brinkley	272A
Cabot	273A
Camden	237A, 246C2
Cherokee Village	265A
Clarendon	297A
Clarksville	224A
Clinton	221A
Conway	224A, 286C1
Corning	228A
Crossett	285A
Dardanelle	272A
De Witt	244A
De Queen	224A
Dermott	276A, 289A
Dumas	296A
El Dorado	227A, 240A, 257A, 276A
England	243A
Eudora	268A
Eureka Springs	265A
Fairfield Bay	292A
Fayetteville	221A, 280A, 300C
Fordyce	269A
Forrest City	228A
Fort Smith	229C, 256C, 260C, 265A
Glenwood	283A
Greenwood	292A
Gurdon	224A
Hamburg	258A
Hampton	296A
Hardy	284A
Harrison	244A, 275C
Heber Springs	244A
Helena	233A, 276A
Hope	269A, 285A
Horseshoe Bend	293A
Hot Springs	244A, 248C1, 292A
Hoxie	263A
Humnoke	269A
Huntsville	240A
Jacksonville	262C1
Jonesboro	261A, 270C, 300C
Lake Village	240A
Little Rock	231C, 239C, 253C, 258A, 279C
Lonoke	292A
Lowell	270C2
Magnolia	300C1
Malvern	227A, 268A
Mammoth Spring	236C1
Marianna	295A
Marion	296A
Marked Tree	229A
Marshall	282C
Maumelle	245A
Mena	269A
Monticello	228A
Morrilton	269A
Mountain Home	252A, 288A, 298C1
Mountain View	277C
Murfreesboro	237A
Nashville	288A
Newport	288A
North Crossett	274A
Osceola	251C1
Ozark	244A
Paragould	285A, 296A.
Paris	237A.
Perryville	290C2.
Piggott	288A.
Pine Bluff	222C1, 235C, 257A, 267A.
Pocahontas	280A.
Rogers	232A.
Russellville	265A.
Salem	240A.
Searcy	257A.
Sheridan	272A.

ARKANSAS—Continued

	Channel No.
Siloam Springs	289C.
Springdale	285A.
Stamps	261A.
Stuttgart	288A.
Texarkana	284A, 292A, 296A.
Trumann	294A.
Van Buren	272A.
Waldron	276A.
Walnut Ridge	292A.
Warren	288A.
West Helena	285A.
Wrightsville	299A.
Wynne	224A.
Yellville	249A.

CALIFORNIA

	Channel No.
Alameda	224A.
Alturas	233C1.
Anaheim	240A.
Anderson	234C2.
Apple Valley	272A.
Arcadia	296A.
Arcata	226C.
Atascadero	283B.
Atwater	223A.
Auberry	286B1.
Auburn	266B.
Avalon	224A.
Avenal	289A.
Bakersfield	221A, 231B, 243B, 257A, 268B, 296A, 300B.
Barstow	232A, 240A.
Berkeley	231B, 275B.
Big Bear Lake	269A.
Bishop	264B.
Blythe	262B
Brawley	233B, 241B.
Burney	291C.
Calexico	249A.
Calipatria	265A.
Camarillo	212B, 240A.
Cambria	232A.
Carlsbad	240A.
Carmel	238A, 269A.
Carnelian Bay	279C2.
Carpinteria	269A.
Cartago	275A.
Cathedral City	253B.
Central Valley	257A.
Chester	255C, 287C2.
Chico	230B1, 236B.
China Lake	274A.
Chowchilla	227A.
Coachella	229B.
Coalinga	261A.
Colusa	243A, 298B.
Compton	272A.
Copperopolis	288A.
Corcoran	272A.
Corning	264B.
Cresent City	232A.
Cresent North	250A.
Davis	288A.
Delano	253B, 287B.
Desert Center	288A.
Dinuba	255B.
Earlimart	228A.
East Hemet	225A.
East Porterville	263A.
El Cajon	227B.
El Centro	298B.
Elfwood	233B.
Escondido	221A.
Eureka	222C, 242C, 268C, 288A.
Fallbrook	296A.
Ferndale	257A.
Firebaugh	276A.
Ford City	271A.
Fort Bragg	237A, 249A.
Fowler	244A.
Freedom	298A.
Fremont	285A.
Fresno	229B, 239B, 250B, 257A, 266B, 270B, 274B, 290B.

CALIFORNIA—Continued

	Channel No.
Garberville	284C.
Garden Grove	232A.
George	264A.
Gilroy	233B.
Glendale	270B.
Goleta	292A.
Gonzales	282A.
Grass Valley	232A, 257A.
Green Acres	292A.
Greenfield	258B, 300B.
Gridley	268A.
Grover City	297B1.
Guadalupe	288A.
Hanford	233A, 279B, 298B.
Healdsburg	225B.
Hemet	289A.
Hollister	228A.
Holtville	261A.
Idyllwild	267A.
Imperial	257A.
Independence	292A.
Indio	224A, 272A.
Inglewood	280A.
Jackson	232A.
Johannesburg	280A.
Julian	261A.
Kerman	232A.
Kernville	272A.
King City	230B1, 271B.
Kings Beach	299A.
Kingsburg	292A.
La Quinta	244A.
Lake Arrowhead	280A.
Lake Isabella	283A.
Lakeport	252A, 258B.
Lancaster	292A.
Lemoore	285A.
Lenwood	285A.
Lindsay	277A.
Livermore	269A.
Livingston	240A.
Lodi	249A.
Lompoc	224A, 265A.
Long Beach	250B, 288A.
Los Altos	249A.
Los Angeles	222B, 226B, 230B, 234B, 238B, 242B, 246B, 254B, 258B, 262B, 266B, 274B, 278B, 282B, 286B, 290B, 298B.
Los Banos	284B
Los Gatos	237A
Los Osos-Baywood Pk	267B
Lucerne Valley	293A
Madera	221A, 297A
Mammoth Lakes	292 A
Manteca	244A
Marina	224A
Mariposa	242B, 280A
Marysville	260B
McFarland	275A
Mendocino	224A
Mendota	272A
Merced	248B, 292A, 299A.
Modesto	230A, 272A, 277B, 281B
Mojave	249A
Monte Rio	249A
Montecito	225A
Monterey	245B
Morgan Hill	241A
Mount Bullion	260B
Mount Shasta	237A
Mountain Pass	258B
Needles	250C2
Newport Beach	276A
Oakdale	236B
Oakhurst	296A
Oceanside	271B
Oildale	237A
OJAI	288A
Ontario	228A
Orange Cove	262A
Orland	293A
Oroville	249A
Oxnard	252A, 271A, 284B
Pacific Grove	285A
Palm Dessert	276A
Palm Springs	265A, 284B, 291B
Paradise	224A, 244A
Pasadena	294B

CALIFORNIA—Continued

	Channel No.
Paso Robles	223B
Patterson	226B
Pismo Beach	237A
Placerville	221A
Porterville	259B
Quincy	262A, 270C2, 276A
Rancho Mirage	258A
Red Bluff	239B, 274C2
Redding	247C, 251C, 282C
Redlands	244A
Redondo Beach	228A
Ridgecrest	224A, 285A
Rio Dell	296A
Riverside	224A, 248B, 25B
Rohnert Park	285A
Rohnerville	263A
Rosamond	288A
Roseville	229B1
Sacramento	223B, 241B, 245B, 253B, 263B, 278A, 286B, 293B, 300B
Salinas	250A, 264B, 273B, 280A
San Bernardino	236B, 260B
San Clemente	285A, 300B
San Diego	231B, 235B, 243B, 247B, 251B, 264B, 268B, 275B, 279B, 287B, 293B
San Fernando	232A
San Francisco	227B, 235B, 239B, 243B, 247B, 251B, 255B, 259B, 267B, 271B, 279B, 283B, 287B, 291B, 295B
San Jacinto	241A
San Joaquin	288A
San Jose	222B, 253B, 262B, 293B
San Luis Obispo	227B, 241B, 246B1, 251B
San Mateo	299B
San Rafael	265A
Santa Ana	244A, 292A
Santa Barbara	229B, 248B, 260B, 277B, 299B1
Santa Clara	289B
Santa Cruz	256B
Santa Margarita	292A
Santa Maria	256B, 273B
Santa Paula	244A
Santa Rosa	261A, 269A
Searles Valley	283A
Seaside	296B1
Sebastopol	229A
Shafter	249A, 282A
Shingle Springs	271A
Soledad	287A
Solvang	244A
Sonora	224A
South Lake Tahoe	230B1, 275B
South Oroville	285A
St. Helena	257A
Stockton	257A, 261A, 297B
Susanville	227C
Butter Creek	269A
Taft	280A
Tahoe City	243C2
Tehachapi	276A
Thousand Oaks	216B 224A
Tracy	265A
Tulare	235B 294B
Turlock	252A
Twin Harte	228A
Twentynine Palms	239B1, 299A
Ukiah	233B, 277B, 290B
Vacaville	237A
Ventura	236B, 264B, 296A
Victorville	276A
Visalia	255B, 241A, 246B
Walnut Creek	221A
Weed	265A
West Covina	252A
Willows	288A
Windon	254A
Woodlake	281B
Woodland	281B
Yermo	251B
Yreka	249A
Yuba City	280A
Yucca Valley	295B

COLORADO

	Channel No.
Alamosa	228A.
Aspen	249A, 296A.
Avon	276A.
Boulder	234C, 247C.
Breckenridge	272A.
Brush	292A, 296A.
Burlington	281C1.
Canon City	280A.
Castle Rock	221A.
Colorado Springs	225C, 230C, 236C, 251C, 270C.
Cortez	250C, 254C.
Craig	229C1, 273C.
Delta	236C.
Denver	239C, 253C, 258C, 262C, 266C, 278C, 286C, 290C, 294C.
Durango	263C1, 267C1.
Eagle	268C.
Evergreen	243C.
Fort Collins	227C, 300C.
Fort Morgan	269A.
Frisco	221A.
Fruita	260C.
Glenwood Springs	224A.
Grand Junction	222C, 226C, 282C, 300C.
Greeley	223C1, 241C.
Gunnison	252A, 272A.
Hayden	240A.
Julesburg	243C1.
Kremmling	292A.
La Junta	221A, 295A.
Lakewood	298C.
Lamar	227C1, 289C1.
Las Animas	297A.
Leadville	228A.
Longmont	282C1.
Loveland	272A.
Manitou Springs	274C.
Monte Vista	237A.
Montrose	231C, 241C.
Oak Creek	280A.
Ouray	285A.
Pagosa Springs	292A.
Pueblo	245C, 255C, 260C, 264C1, 283C1, 296A, 300C1.
Rifle	287C.
Rocky Ford	238C1.
Salida	221A.
Security	288A.
Silverton	257A, 279C2, 297C.
Snowmass Village	280A.
Steamboat Springs	244A.
Sterling	284C1, 288A.
Trinidad	223C.
Vail	284C1.
Walsenburg	272A.
Widefield	292A.
Windsor	256C.
Wray	252A.
Yuma	265A.

CONNECTICUT

	Channel No.
Bridgeport	260B.
Brookfield	236B.
Danbury	252A.
East Lyme	254A.
Enfield	250A.
Groton	288A.
Hamden	267B.
Hartford	229B, 243B, 275B, 290B, 295B.
Hartford-Meriden	239B.
Ledyard	293A.
Litchfield	247A.
Middletown	285A.
New Britain	263B.
New Haven	232A, 256B.
New London	265A.
Norwalk	240A.
Norwich	249A.
Pawcatuck	299A.
Salisbury	251A.
Sharon	277A.
Stamford	244A.

CONNECTICUT—Continued

	Channel No.
Stonington	272A.
Waterbury	223B, 281B.
Westport	300B.
Willimantic	252A.

DELAWARE

	Channel No.
Bethany Beach	240A.
Dover	234B.
Fenwick Island	221A.
Georgetown	228A.
Laurel	237A.
Lewes	290A.
Milford	249A, 267A.
Ocean View	269A.
Rehoboth Beach	224A.
Seaford	252A.
Selbyville	250A.
Smyrna	225A.
Wilmington	229B, 258B.

DISTRICT OF COLUMBIA

	Channel No.
Washington	230B, 242B, 246B, 254B, 258B, 262B, 266B, 278B, 297B.

FLORIDA

Alachua	223A.
Apalachicola	265A, 288A.
Apopka	237A.
Arcadia	252A.
Atlantic Beach	283C.
Avon Park	292A.
Belle Glade	228A.
Beverly Hills	246A.
Big Pine Key	284C.
Blountstown	272A.
Boca Raton	260C.
Bonifay	249A.
Bonita Springs	241C.
Bradenton	277C.
Callaway	278C1.
Cape Coral	280A, 292A.
Century	286A.
Chattahoochee	287A.
Chiefland	247A.
Clearwater	239C1, 250C1.
Clewiston	292A.
Cocoa	257A.
Cocoa Beach	266C, 281C.
Coral Cove	300A.
Coral Gables	286C.
Crestview	285A.
Cross City	292A.
Crystal City	253C.
Daytona Beach	233C, 270C1.
Defuniak Springs	276A.
Deland	290C.
Destin	221A.
Dunnellon	272A.
Edgewater	226A.
Englewood	290A.
Fort Lauderdale	264C, 278C, 290C, 294C.
Fort Myers	237A, 245C, 270C.
Fort Myers Beach	257A.
Fort Myers Villas	292A.
Fort Pierce	238C1, 254C.
Fort Walton Beach	243C, 258C2.
Gainesville	265A, 279C, 288A.
Gifford	234A.
Goulds	252A.
Graceville	271A.
Green Cove Springs	224A.
Gretna	264A.
Gulf Breeze	291A.
Havana	285A.

FLORIDA—Continued

Hialeah	222C2.
High Springs	285A.
Holiday	292A.
Holly Hill	277A.
Holmes Beach	254A.
Homestead	239C1.
Homosassa Springs	237A.
Immokalee	252A.
Jacksonville	236C, 241C, 245C, 256C, 275C, 297C.
Jensen Beach	272A.
Jupiter	296A.
Key Colony Beach	288A.
Key Largo	280A.
Key West	223C1, 228A, 254C, 258C, 296A, 300C1.
Labelle	221A.
Lafayette	260A.
Lake City	232A.
Lakeland	231C.
Leesburg	294C.
Lehigh Acres	296A.
Live Oak	251C1.
MacClenny	221A.
Madison	285A.
Marathon	232A, 249A, 292A.
Marco	224A, 266C1.
Marianna	227A, 265A.
Mary Esther	288A.
Melbourne	272A, 292A, 296A.
Mexico Beach	257A.
Miami	226C1, 243C 247C, 256C, 268C1, 298C1.
Miami Beach	230C, 235C.
Micanopy	249A.
Milton	274C.
Monticello	270A.
Mount Dora	299C.
Naples	228A, 233C, 276A.
Naples Park	288A.
Newberry	263A.
New Port Richey	288A.
Ocala	224A, 229C.
Okeechobee	276A.
Orlando	222C, 243C, 255A, 262C, 286C.
Palatka	260C.
Palm Beach	250C.
Panama City	223C, 253C, 292A, 300C.
Panama City Beach	286C2.
Pensacola	231C, 254C2, 264C, 268C1, 297C.
Perry	288A.
Plantation Key	262C1, 276A.
Pompano Beach	274C.
Ponte Vedra Beach	293A.
Port Charlotte	261A.
Port St. Joe	228A, 233C.
Punta Gorda	224A.
Quincy	269A, 274A.
Riviera Beach	232A.
Rock Harbor	271C2.
Rockledge	274A.
Safety Harbor	223C2.
Sanibel	253A.
Santa Rosa Beach	272A.
Sarasota	273C, 288A, 292A.
Sebring	288A.
Silver Springs	238A.
Solana	287A.
Springfield	240A, 270A.
St. Augustine	249A, 288A.
St. Petersburg	258C, 268C1, 297C1.
Starke	292A.
Stuart	224A.
Summerland Key	275A.
Tallahassee	235C, 240A, 255C1, 276A, 281C, 291A.
Tampa	227C, 235C, 264C1, 284C.
Tice	229A.
Titusville	252A.
Trenton	269A.
Venice	221A.
Vero Beach	228A, 269A, 288A.
Watertown	289A.
West Palm Beach	221A, 282C1, 300C
Williston	221A.
Winter Haven	248C.

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Winter Park	276A.

GEORGIA

	Channel No.
Adel	221A.
Albany	242C1, 269A, 283C1.
Alma	240A.
Americus	232A, 249A.
Ashburn	289A.
Athens	238C, 284C.
Atlanta	225C1, 235C, 241C, 253C, 259C, 277C.
Augusta	272A, 276A, 282C, 289C1.
Bainbridge	247C.
Baxley	233C.
Blackshear	285A.
Blakely	228A.
Blue Ridge	280A.
Boston	292A.
Brunswick	264C1, 268C.
Buford	272A.
Cairo	272A.
Camilla	288A.
Canton	288A.
Carrollton	221A.
Chatsworth	257A.
Clarkesville	275A.
Claxton	296A.
Clayton	281A.
Cleveland	270A.
Cochran	244A.
Columbus	275C, 285A, 297C.
Cordele	252A.
Cornelia	257A.
Crawford	271A.
Cuthbert	264A.
Dawson	221A.
Dock Junction	290A.
Donalsonville	292A.
Douglas	258C, 294C1.
Dublin	224A, 240A.
Eastman	221A.
Elberton	221A.
Ellijay	228A.
Folkston	222A.
Forsyth	261A.
First Valley	250A, 292A.
Gainesville	246C.
Gainsville	294C.
Glennville	292A.
Gordon	296A.
Greensboro	280A.
Griffin	249A.
Hawkinsville	280A.
Hazlehurst	228A.
Hinesville	221A.
Hogansville	248A.
Homerville	288A.
Irwinton	279A.
Jackson	221A.
Jeffersonville	248A.
Jesup	252A, 288A.
Kingsland	292A.
La Grange	261C1.
Lakeland	290A.
Leesburg	279A.
Louisville	221A.
Lyons	223A.
Mableton	273A.
Macon	222A, 256C1, 287C, 300C1.
Manchester	227C.
Marietta	268C.
Martinez	232A.
McRae	237A.
Metter	285A.
Milan	285A.
Milledgeville	264A, 272A.
Millen	235A.
Montezuma	223A.
Moultrie	230C1.
Nashville	237A.
Newnan	244A.
Ocilla	249A, 253A.
Omega	298A
Perry	265A.
Quitman	287A.

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	Channel No.
Reidsville	281A.
Richmond Hill	286A.
Ringgold	270A.
Rockmart	296A.
Rome	249A, 272A.
Rossville	288A.
Roswell	298A.
Royston	279A.
Sandersville	228A.
Savannah	226C1, 231C, 238C1, 243C, 247C, 271C.
Smyrna	231C.
Soperton	269A.
Sparta	249A, 274A.
Springfield	280A.
St. Marys	228A.
St. Simons Island	224A.
Statesboro	261A, 275A.
Swainsboro	252A, 280A.
Sylvester	271A.
Thomaston	237A.
Thomasville	296A.
Thomson	269A.
Tifton	262C.
Toccoa	291C.
Trenton	274A.
Trion	239A.
Valdosta	225C1, 239C2, 244A, 266C1, 299A.
Vidalia	249A.
Warner Robins	269A.
Washington	261A.
Waycross	249A, 273C1, 277C.
Waynesboro	265A.
Westpoint	265A.
Wrens	244A.
Wrightsville	292A

HAWAII

	Channel No.
Aiea	300C.
Hilo	224A, 234C1, 246C2, 250C2, 262C1.
Honolulu	226C1, 230C1, 234C1, 238C1, 248C1, 253C1, 258C1, 262C1, 286C, 290C.
Kahului	260C1.
Kailua	242C.
Kailua-Kona	228A.
Kaneohe	282C.
Kealakekua	221A.
Lahaina	228A, 266C1.
Lihue	228A, 245C1.
Makawao	232A.
Paauilo	279C.
Pearl City	270C.
Pukalani	252A.
Wailuku	236C.
Waimea	256C.
Waipahu	222C, 274C

IDAHO

	Channel No.
American Falls	281A.
Blackfoot Falls	247C, 268C,.
Boise	222C, 250C, 282C, 286C.
Bonners Ferry	221A.
Burley	260C .
Caldwell	231C, 277C, 296A.
Chubbuck	252A.
Coeur D'Alene	272A, 276A.
Emmett	270C.
Garden City	290C.
Gooding	267A.
Grangeville	224A.
Hayden	233A.
Idaho Falls	241C, 256C1, 277C1.
Jerome	275C1.
Ketchum	284A.
Lewiston	243C, 268C1, 295C.
Moscow	291C1.
Mountain Home	257A.

IDAHO—Continued

	Channel No.
Nampa	235C, 245C.
New Plymouth	226C.
Orofino	237A.
Payette	262C1.
Pocatello	229C, 235C, 273C.
Preston	244A.
Rexburg	232CA, 252A, 263C1.
Rupert	223C.
Salmon	224A.
Sandpoint	237A, 273A.
Soda Springs	261A.
Sun Valley	237A, 279C.
Twin Falls	239C1, 243C1.
Wallace	248C, 264C.
Weiser	257A

ILLINOIS

	Channel No.
Aledo	272A.
Alton	262B.
Anna	224A.
Arlington Heights	224A.
Augusta	266A.
Aurora	240A, 300B.
Ava	280A.
Beardstown	232A.
Belvidere	285A.
Benton	292A.
Bloomington	268B.
Bushnell	284A.
Canton	252A, 265A.
Carbondale	268B.
Carmi	247B.
Carrier Mills	283A.
Carterville	236A.
Carthage	221A.
Casey	282B1.
Centralia	237A.
Champaign	233B, 248B, 262B1.
Charleston	221A.
Chicago	226B, 230B, 234B, 238B, 242B, 246B, 250B, 254B, 258B, 262B, 266B, 278B, 282B, 298B.
Chillicothe	232A.
Clinton	240A.
Coal City	264A.
Columbia	285A.
Crest Hill	252A.
Crete	272A.
Danville	256B, 271B.
Decatur	226A, 236B, 275B.
Dekalb	223B, 235A.
Des Planes	294B.
Dixon	269A.
Duquoin	240A.
Dundee	280A.
Dwight	255A.
East Moline	267B.
East St. Louis	266B.
Effingham	239B, 249A.
Eldorado	272A.
Elgin	232A.
Elmwood Park	290B.
Eureka	253A.
Evanston	286B.
Fairfield	285A.
Farmer City	252A.
Farmington	239A.
Flora	280A.
Freeport	221A, 253B.
Galena	298A.
Galesburg	224A, 235B.
Galva	273A.
Geneseo	285A.
Gibson City	292A.
Granite City	293C2.
Greenville	269A.
Harrisburg	260B.
Havana	257A.
Henry	263A.
Highland Park	276A.
Hoopeston	265A.
Jacksonville	263B.
Jerseyville	281B.
Joliet	228A, 244A.
Kankakee	224A, 236A, 260B.

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	Channel No.
Kewanee	221A.
La Salle	257A.
Lansing	292A.
Lawrenceville	276A.
Le Roy	224A.
Lincoln	261A.
Litchfield	291B.
Loves Park	244A.
Macomb	261A, 276A.
Mahomet	290A.
Marion	297B.
Marseilles	243A.
Marshall	290A.
Mattoon	245B, 267A.
Mendota	261A.
Metropolis	252A.
Moline	245B.
Monmouth	249A.
Monticello	288A.
Morris	284B.
Morrison	236A.
Morton	272A.
Mount Carmel	235B.
Mount Morris	263A.
Mount Vernon	231B, 271B1.
Mount Zion	257A.
Murphysboro	285A.
Nashville	284A.
Newton	295A.
Normal	244A.
Oak Park	274B.
Olney	225B.
Oregon	291A.
Ottawa	237A.
Pana	265A.
Paris	253B.
Paxton	285A.
Pekin	237A, 285A.
Peoria	222A, 227B, 289B, 295B.
Peru	265A.
Petersburg	249A.
Pinckneyville	282A.
Pittsfield	248B1.
Plano	296A.
Polo	299A.
Pontiac	276A.
Princeton	252A.
Quincy	258B, 280A, 286B.
Ramsey	287A.
Rantoul	237A, 241A.
Robinson	269A.
Rochelle	272A.
Rock Island	255B.
Rockford	248B, 265A.
Rockton	276A.
Rushville	244A.
Salem	261A.
Savanna	261A.
Shelbyville	285A.
Skokie	270B.
South Jacksonville	288A.
Spring Valley	277A.
Springfield	254B, 270B, 279B, 283B.
Sterling	232A.
Streator	249A.
Sullivan	292A.
Taylorville	224A.
Tuscola	228A.
Urbana	280A, 296A.
Vandalia	296A.
Virden	244A.
Watseka	231B.
Waukegan	272A.
West Frankfort	249A.
Wilmington	288A.
Winnebago	237A.
Woodlawn	295A.
Woodstock	288A.
Zion	245B.

INDIANA

	Channel No.
Alexandria	224A.
Anderson	250B, 254A.
Angola	261A.
Attica	239A.

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	Channel No.
Auburn	272A.
Aurora	257A.
Austin	242A.
Batesville	280A.
Bedford	288A.
Berne	230A.
Bicknell	289A.
Bloomfield	266A.
Bloomington	222B, 224A, 279B.
Bluffton	261A.
Booneville	296A.
Brazil	249A.
Charlestown	282A.
Clinton	230A.
Columbia City	292A.
Columbus	268B, 285A.
Connersville	262B.
Corydon	243A, 299B.
Covington	276A.
Crawfordsville	280A, 292A.
Crown Point	260A.
Danville	296A.
Decatur	224A.
Delphi	275A.
Earl Park	252A.
Elkhart	264B, 284B.
Elwood	269A.
Evansville	281B, 287B, 298A.
Fort Branch	268A.
Fort Wayne	222A, 236B, 247B, 269A, 280A.
Frankfort	259B.
Franklin	240A.
French Lick	261A.
Goshen	249A.
Greencastle	232A.
Greenfield	258B.
Greensburg	297B.
Greenwood	294A.
Hammond	222B.
Hartford City	228A.
Huntingburg	265A.
Huntington	276A.
Indianapolis	226B, 234B, 238B, 242A, 277B, 283B, 289B, 300B.
Jasper	284B.
Jeffersonville	239B.
Kendallville	227B.
Kentland	269A.
Knox	257A.
Kokomo	224A, 263B.
La Porte	244A.
Lafayette	228A, 243B, 287B.
Lagrange	288A.
Lebanon	265A.
Linton	228A.
Logansport	272A.
Loogootee	232A.
Lowell	296A.
Madison	244A.
Marion	295B.
Martinsville	272A.
Michigan City	240A.
Mitchell	273A.
Monticello	237A.
Mount Vernon	294A.
Muncie	221A, 281B, 285A.
Nappanee	239A.
New Carlisle	272A.
New Castle	273B.
New Haven	300A.
Newburgh	291A.
Noblesville	230A.
North Vernon	291B.
Paoli	237A.
Peru	252A.
Petersburg	272A.
Plainfield	252A.
Plymouth	232A.
Portland	265A.
Princeton	251B.
Rensselaer	249A.
Richmond	241B, 267B.
Rochester	221A.
Rockville	285A.
Royal Center	279A.
Rushville	232A.
Salem	255B.
Scottsburg	265A.
Seymour	229B.
Shelbyville	246B.

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	Channel No.
South Bend	225B, 268B, 276A, 280A, 292A.
Spencer	224A.
Sullivan	237A.
Terre Haute	260B, 264B, 274B, 298B.
Valparaiso	288A.
Van Buren	257A.
Versailles	276A.
Vevay	240A.
Vincennes	221A, 244A.
Wabash	240A.
Warsaw	297B.
Washington	293B.
West Terre Haute	288A.
Winamac	261A.
Winchester	252A.

IOWA

	Channel No.
Algona	224A.
Ames	281C, 296A.
Ankeny	223C2, 292A.
Atlantic	279C.
Belle Plaine	239A.
Bettendorf	228A.
Bloomfield	292A.
Boone	252A 257A.
Brooklyn	257A.
Burlington	228A 297C1.
Carroll	229C1.
Cedar Rapids	243C1, 251C, 275C, 283C.
Centerville	254C1.
Chariton	288A.
Charles City	240A.
Cherokee	221A 272A.
Clarinda	292A.
Clarion	245C1.
Clear Lake	276A.
Clinton	224IC1, 249A.
Council Bluffs	253C.
Cresco	272A.
Creston	269A.
Davenport	279C, 293C1.
Decorah	265A.
Denison	296A.
Des Moines	227C, 235C, 247C, 262C, 273C, 298C2.
Dubuque	225C, 272A, 287C2.
Dyersville	257A.
Eldora	258A.
Emmetsburg	252A.
Estherville	240A.
Fairfield	240A.
Forest City	272A.
Fort Dodge	221A, 233C1.
Fort Madison	269A.
Garnavillo	261A.
Grinnell	294A.
Grundy Center	249A.
Hampton	285A.
Harlan	288A.
Humboldt	249A.
Ida Grove	224A.
Independence	237A.
Iowa City	230C1, 264C1.
Iowa Falls	237A.
Jefferson	255A.
Keokuk	237A.
Knoxville	221A.
Lamoni	249A.
Le Mars	258C1.
Manchester	234A.
Maquoketa	237A.
Marshalltown	266C1.
Mason City	228A, 252A, 291C1.
Mount Pleasant	288A.
Muscatine	259C1.
New Hampton	236A.
Newton	240A.
Northwood	274A.
Oelwein	222C.
Onawa	272A.
Osage	224A.
Osceola	295C2.
Oskaloosa	285A.
Ottumwa	224A, 249A.

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	Channel No.
Pella	277C1.
Perry	285A.
Red Oak	237A.
Rock Valley	295A.
Sac City	286A.
Sheldon	288A.
Sibley	262A.
Sioux Center	232A.
Sioux City	238C, 250C, 277C1.
Spencer	285A, 299C1.
Spirit Lake	280A.
Storm Lake	268C1.
Twin Lakes	288A.
Washington	237A.
Waterloo	270C, 289C, 300C.
Waukon	280A.
Waverly	257A.
Webster City	240A.
Winterest	239A

KANSAS

	Channel No.
Abilene	253C1.
Arkansas City	293C.
Augusta	242A.
Baxter Springs	296A.
Belleville	221A.
Beloit	268A.
Caney	266A.
Chanute	228A.
Clay Center	265A.
Coffeyville	221A.
Colby	250C, 262C1.
Columbus	252A.
Concordia	237A.
Derby	240A.
Dodge City	230C1, 238C1.
Downs	231C.
El Dorado	257A.
Emporia	269A, 285A.
Eureka	228A.
Fort Scott	269A, 280A.
Fredonia	281A.
Garden City	247C1.
Girard	266A.
Goodland	273C, 299C1.
Great Bend	282C1, 300C1.
Hays	258C1, 277C1.
Haysville	287C.
Herington	242A.
Hiawatha	280A.
Hill City	270C.
Hoisington	264C1.
Hugoton	294C2.
Hutchinson	271C, 275C.
Independence	269A.
Iola	257A.
Junction City	233C1.
Kansas City	231C, 251C.
Kingman	232A, 257A.
Larned	244A.
Lawrence	280C1.
Leavenworth	255C.
Leoti	260C1.
Liberal	268C1, 274C1, 298C1.
Lindsborg	240A.
Lyons	291C1.
Manhattan	269A, 284C2.
Marysville	276A.
McPherson	244A.
Medicine Lodge	240A.
Newton	222C1.
North Fort Riley	273C2.
Norton	284C1.
Oberlin	266C1.
Ogden	280A.
Olathe	222A.
Osage City	224A.
Ottawa	239C1.
Parsons	228A.
Phillipsburg	223C1, 237A.
Pittsburg	245C.
Plainville	244A.
Pratt	226C.
Russell	240A.
Salina	229C1, 260C1, 285A.
Scott City	223C1.
Seneca	221A.

KANSAS—Continued

	Channel No.
Topeka	223A, 247C, 262C, 295C, 299C.
Wamego	237A.
Wellington	228A.
Wichita	236C, 250C, 267C, 279C, 297C1.
Winfield	232A

KENTUCKY

	Channel No.
Albany	292A.
Allen	261A.
Ashland	229C1.
Barbourville	228A.
Bardstown	244A.
Beattyville	272A.
Beaver Dam	274A.
Benton	272A.
Berea	294A.
Bowling Green	244A, 252A.
Brandenburg	228A.
Buffalo	268A.
Burkesville	253A.
Burnside	230A.
Cadiz	292A.
Campbellsville	280A.
Carrollton	261A.
Catlettsburg	224A.
Cave City	294A.
Central City	270C.
Columbia	228A.
Corbin	258C2, 297C2.
Cumberland	274A.
Cynthiana	272A.
Danville	296A.
Edmonton	256A.
Elizabethtown	261A.
Elkhorn City	276A.
Eminence	289A.
Erlanger	265A.
Falmouth	245A.
Flemingsburg	292A.
Fort Campbell	300C1.
Fort Knox	288A.
Frankfort	285A.
Fulton	257A.
Georgetown	276A.
Glasgow	236C, 288A.
Grayson	272A.
Greensburg	276A.
Greenup	289B1.
Greenville	288A.
Hardinsburg	232A.
Harlan	286A.
Harrodsburg	257A.
Hartford	292A.
Hawesville	289A.
Hazard	266C, 284A.
Henderson	258C, 276A.
Hindman	296A.
Hodgenville	292A.
Hopkinsville	254C1, 262C.
Hyden	222A.
Irvine	291A.
Jackson	249A.
Jamestown	285A.
Jeffersontown	269A.
Jenkins	232A.
Lancaster	286A.
Lawrenceburg	271A.
Lebanon	265A.
Leitchfield	285A.
Lexington	225C1, 233C1, 251C1.
Lexington-Fayette	283C2.
Liberty	288A.
London	280A.
Louisa	222A.
Louisville	248C1, 259B, 263C2, 272A, 280A, 295B.
Madisonville	230C2.
Manchester	276A, 289A.
Marion	274A.
Mayfield	234C2.
Maysville	240A.
McKee	300A.
Middlesboro	224A.
Midway	300A.
Monticello	269A.

KENTUCKY—Continued

	Channel No.
Morehead	221A.
Morganfield	237A.
Mount Sterling	288A.
Mount Vernon	275A.
Munfordville	272A.
Murray	279C1.
Nicholasville	273A.
Owensboro	223C, 241C.
Owingsville	296A.
Paducah	227C1, 245C1.
Paintsville	255C1.
Paris	244A.
Pikeville	221A.
Pineville	292A.
Prestonsburg	238C, 288A.
Princeton	285A.
Providence	249A.
Radcliff	278A.
Richmond	269A.
Russellville	266C.
St. Matthews	276A.
Salyersville	247A.
Scottsville	257A.
Shelbyville	267A.
Shepherdsville	286A.
Smiths Grove	296A.
Somerset	244A, 272A.
Springfield	274A.
Stanford	240A.
Stanton	285A.
Tompkinsville	221A.
Vanceburg	285A.
Vancleve	260A.
Versailles	292A.
Whitesburg	280A.
Whitley City	290A.
Wickliffe	240A.
Williamsburg	282A.
Wilmore	242A.
Winchester	261A.

LOUISIANA

	Channel No.
Abbeville	285A.
Alexandria	226C, 230A, 245C, 262C.
Arcadia	223A.
Basile	271A.
Bastrop	232A, 261A, 277A.
Baton Rouge	251C, 264C1, 268C, 273C.
Bayou Vista	237A.
Belle Chasse	275A.
Benton	221A.
Berwick	290A.
Boyce	272A.
Breaux Bridge	243A.
Brusly	242A.
Bunkie	282A.
Buras Triumph	231A.
Clinton	224A.
Columbia	276A.
Coushatta	222A.
Crowley	275C.
Delhi	228A.
Deridder	221A, 269A.
Donaldsonville	285A.
Dubach	249A.
Erath	225A.
Eunice	288A.
Farmerville	224A.
Ferriday	296A.
Franklin	288A.
Galliano	232A.
Hammond	277C, 296A.
Haughton	279A.
Haynesville	288A.
Homer	260A.
Houma	281C, 298C1.
Jena	257A.
Jennings	224A.
Jonesboro	285A.
Jonesville	266A.
Kaplan	247C2.

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	Channel No.
Lafayette	233C, 238A, 260C.
Lake Arthur	297A.
Lake Charles	241C, 258C, 279C, 287C2.
Lake Providence	224A.
LaPlace	222C.
Larose	262A.
Leesville	224A, 288A.
Mansfield	224A.
Many	296A.
Marksville	249A.
Maurice	292A.
Minden	237A.
Monroe	270C, 281C, 287C2, 291C.
Moreauville	221A.
Morgan City	244A.
Natchitoches	240A, 249A.
New Iberia	229C2, 256C.
New Orleans	227C, 239C, 246C. 253C, 258C, 266C, 270C.
New Roads	293C2.
North Fort Polk	294A.
Oak Grove	244A.
Oakdale	285A.
Opelousas	290A, 296A.
Port Sulphur	294C1.
Rayne	294A.
Rayville	221A.
Reserve	235A.
Ruston	258A, 298C.
Shreveport	229C, 233C, 243C1, 261A, 266C, 275C2.
Slidell	287C1.
South Fort Polk	267A.
Springhill	224A.
Sulphur	265A.
Tallulah	285A.
Thibodaux	292A.
Tioga	252A.
Varnado	224A.
Ville Platte	228A.
Vivian	239A.
Washington	284A.
West Monroe	252A.
Winnfield	221A.
Winnsboro	240A

MAINE

	Channel No.
Auburn	260B.
Augusta	222B, 267B.
Bangor	225B, 246B.
Bar Harbor	256B1, 299B.
Bath	290B.
Belfast	284B.
Biddeford	232A.
Boothbay Harbor	244A.
Brewer	262B, 293C.
Brunswick	255B.
Calais	224A.
Camden	273B.
Caribou	249A.
Dexter	271A.
Dover-Foxcroft	276A.
Ellsworth	233B, 239B.
Fairfield	227A.
Farmington	257A.
Gardiner	282B.
Houlton	261A.
Kennebunk	257A.
Kennebunkport	284A.
Kittery	287A.
Lewiston	230B, 298B.
Lincoln	257A.
Machias	237A.
Madawaska	272A.
Madison	248A.
Mexico	264A.
Milbridge	229B.
Millinocket	249A.
Norway	224A.
Old Town	297B.

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	Channel No.
Pittsfield	258A.
Portland	226B, 250B, 270B, 275C.
Presque Isle	241C, 245C, 269A. 291C.
Rockland	228A.
Rumford	242C.
Saco	240A.
Sanford	221A.
Scarborough	292A.
Skowhegan	286C, 300A.
Thomaston	295B.
Topsham	238A.
Van Buren	251A.
Waterville	253C2.
Westbrook	265A.
Winslow	237A.
York Center	237A.

MARYLAND

	Channel No.
Annapolis	256B, 300B.
Baltimore	222B, 226B, 236B, 250B, 270B, 274B, 282B, 293B.
Berlin	280A.
Bethesda	234B, 272A.
Braddock Heights	280A.
Cambridge	232A, 292A.
Catonsville	289B.
Crisfield	245A.
Cumberland	275B, 291B.
Easton	244A.
Federalsburg	296A.
Frederick	260B.
Frostburg	287B.
Glen Burnie	240A.
Grasonville	276A.
Hagerstown	284B, 295B.
Halfway	244A.
Havre De Grace	279B.
Hurlock	265A.
LaPlata	281B.
Lexington Park	249A.
Mechanicsville	252A.
Middletown	276A.
Morningside	238B.
Oakland	221A.
Ocean City	260B.
Ocean City-Salisbury	284B.
Ocean Pines	246A.
Pocomoke City	293A.
Prince Frederick	224A.
Princess Anne	273B.
Salisbury	248A, 255A, 288A.
Westernport	224A.
Westminster	264B.
Williamsport	240A

MASSACHUSETTS

	Channel No.
Ahherst	265A.
Athol	260A.
Barnstable	260B.
Boston	233B, 245B, 253B, 264B, 277B, 281B, 294B.
Brockton	249A.
Brookline	225B.
Cambridge	237A.
Chatham	298B.
Fairhaven	296A.
Falmouth	266A, 270B.
Fitchburg	283B.
Framingham	289B.
Gloucester	285A.
Great Barrington	286A.
Greenfield	237A, 252A.
Harwichport	228A.
Haverhill	223B.

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	Channel No.
Hyannis	275A, 291B.
Lawrence	229B.
Lowell	258B.
Lynn	269A.
Marshfield	240A.
Medford	300B.
Nantucket	242B.
New Bedford	247B, 251B.
North Adams	261A.
Northampton	257A, 292A.
Orange	247A.
Orleans	284B.
Pittsfield	240A, 269A, 288A.
Plymouth	256B.
Southbridge	261A.
South Yarmouth	280A.
Springfield	226B, 234B, 271B.
Taunton	227B.
Tisbury	224A.
Truro	272A.
Turners Falls	230A.
Waltham	273B.
Webster	256A.
West Yarmouth	235B.
Winchendon	249A.
Worcester	241B, 297B.

MICHIGAN

	Channel No.
Adrian	237A, 280A.
Albion	244A.
Allegan	222A.
Alma	265A.
Alpena	228A, 299C1.
Ann Arbor	275B, 296A.
Atlanta	223C.
Bad Axe	221A.
Baraga	282C.
Battle Creek	237A, 277B.
Bay City	241C, 273B.
Bear Lake	261A.
Beaverton	249A.
Benton Harbor	235A, 260B.
Big Rapids	265A, 272A.
Birmingham	234B.
Boyne City	228A.
Brooklyn	287A.
Buchanan	256A.
Cadillac	225C, 244A, 296A.
Caro	285A.
Carrollton	263A.
Charlevoix	290C.
Charlotte	224A.
Cheboygan	286C1.
Clare	237A.
Coldwater	253B.
Coleman	268A.
Crystal Falls	264C.
Dearborn	262B.
Detroit	222B, 226B, 238B, 242B, 246B, 250B, 254B, 258B, 266B, 270B, 278B, 282B, 286B, 290B, 294B, 298B.
Dewitt	243A.
Dowagiac	221A.
East Jordan	265A.
East Lansing	235B, 256B.
Escanaba	284C, 246C.
Essexville	247A.
Flint	224A, 236B, 288A, 300B.
Frankfort	257A.
Fremont	261A.
Gaylord	237A, 294C.
Gladstone	288A.
Gladwin	276A.
Glen Arbor	240A.
Grand Haven	221A.
Grand Rapids	229B, 239B, 245B, 250B, 255A, 267B, 275B, 281B, 289B.
Grayling	261A.
Greenville	297B.
Gulliver	234C1.
Hancock	228A, 254C2.
Harbor Beach	289 C2.

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Harbor Springs	280A.
Harrison	221A.
Hart	287C.
Hartford	279A.
Hastings	261A.
Hillsdale	221A.
Holland	233B, 241B.
Houghton	242C, 249A, 272A.
Houghton Lake	253C1.
Howell	228A.
Hudson	249A.
Iron Mountain	226C1, 268C1.
Iron River	257A.
Ironwood	259C1, 295C1.
Ishpeming	222C, 298C1.
Jackson	231B, 291B.
Kalamazoo	271B, 293B, 299B.
Kalkaska	249A.
Kingsford	255A.
Lakeview	292A.
Lansing	248B, 264B, 269A.
Lapeer	276A.
Leland	232A.
Ludington	292A.
Mackinaw City	232A.
Manistee	249A.
Marquette	239C1, 277C1.
Marshall	285A.
Menominee	280A.
Midland	228A, 259C.
Mio	280A.
Monroe	252A.
Mount Clemens	274B.
Mount Pleasant	233C1, 282A.
Munising	252 C2.
Muskegon	269A, 283B, 295B, 300A.
Newberry	228A, 250 C2.
Niles	237A.
North Muskegon	252A.
Norway	232A.
Ontonagon	252A.
Oscoda	239 C2, 261A.
Otsego	265A.
Owasso	280A.
Pentwater	276A.
Petoskey	242C1, 255C.
Pinconning	265A.
Port Huron	272A, 296A.
Portage	243A.
Rogers City	249A.
Roscommon	266A.
Saginaw	251B, 283A, 292A, 296A.
Sandusky	249A.
Saugatuck	224A.
Sault Ste. Marie	252A, 258C1, 267 C .
Scottville	240A.
Sebewaing	280A.
South Haven	252A.
Spring Arbor	295A.
St. Ignace	275C.
St. Johns	221A.
St. Joseph	296A.
Standish	245A.
Stephenson	257A.
Sturgis	257A.
Tawas City	269A, 284 C2.
Three Rivers	240A.
Traverse City	221A, 270C1, 278C.
Tuscola	269A.
Vassar	255A.
Walker	263A.
West Branch	288A.
Whitehall	237A.
Wurtsmith	235A.
Zeeland	257A.

MINNESOTA

	Channel No.
Ada	292A.
Aitkin	232A.
Albany	288A.
Albert Lea	237A, 241A.
Alexandria	224A, 257A, 264C.
Anoka	300C.
Atwater	231A.
Austin	260C1.

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	Channel No.
Babbitt	294A.
Bemidji	266C1, 279C1.
Benson	228A.
Blue Earth	265A.
Brainerd	294C1, 298C1.
Breckenridge	286C1.
Breezy Point	282 C2.
Browerville	259A.
Caledonia	234A.
Cambridge	288A.
Cloquet	265A.
Crookston	241C1, 246C1.
Deer River	288A.
Detroit Lakes	236C.
Duluth	225C1, 235C, 239C1, 255C2, 269A, 277C1, 286C1.
East Grand Forks	282C1.
Eden Prairie	289A.
Ely	221A.
Eveleth	250C1.
Farimont	293C1.
Fairbault	240A.
Fergus Falls	243C1, 277C1.
Forest Lake	240A.
Fosston	296A.
Glenwood	296A.
Golden Valley	223C.
Grand Marais	263C.
Grand Rapids	245C1.
Granite Falls	230A.
Hibbing	230C1, 292A.
Hutchinson	296A.
International Falls	258C1, 281C.
Jackson	287A.
La Crescent	274A.
Lakeville	286A
Le Sueur	241A.
Litchfield	237A.
Little Falls	221A, 231A.
Luverne	266C.
Madison	221A.
Mankato	256C1, 278C1.
Marshall	261A, 296A.
Minneapolis	229C, 246C, 253C, 258C, 262C1, 275C.
Mantevideo	288A.
Moorhead	254C1, 260C.
Mora	237A.
Morris	239C1.
New Prague	238A.
New Ulm	226C1.
Nisswa	227C.
North Mankato	244A.
Olivia	269A.
Ortonville	268C, 292A.
Osakis	280A.
Owatonna	285A.
Park Rapids	248C1.
Pequot Lakes	261A.
Pine City	221A.
Pipestone	254C1.
Preston	276A.
Princeton	292A.
Red Wing	288A.
Redwood Falls	249A.
Richfield	267C.
Rochester	244A, 248C, 269A, 295C.
Roseau	271 C2.
Sartell	241A.
Sauk Centre	232A.
Sauk Rapids	269A.
Slayton	276A.
Sleepy Eye	297A.
Spring Grove	252A.
Spring Valley	282A.
Springfield	289A.
St. Cloud	251C, 284C.
St. James	285A.
St. Louis Park	281C.
St. Paul	233C, 237A, 271C.
St. Peter	288A.
Staples	234A.
Stewartville	235A.
Thief River Falls	262C1, 274C1.
Tracy	286A.
Two Harbors	282A.
Virginia	260C1.
Wadena	290C1.
Walker	257A.
Warroad	223C1.

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Waseca	221A.
Willmar	273C.
Windom	232A.
Winona	237A, 268A.
Worthington	228A, 236C1.

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	Channel No.
Aberdeen	288A.
Ackerman	300C.
Amory	237A.
Artesia	261A.
Baldwin	240A.
Batesville	240A.
Bay Springs	228A.
Belzoni	225A, 296A.
Biloxi	229C.
Booneville	257A.
Brandon	249A.
Brookhaven	221A.
Bruce	233A.
Calhoun City	272A.
Canton	269A.
Carthage	252A.
Centreville	285A.
Charleston	232A.
Clarksdale	243A, 269A, 292A.
Cleveland	224A, 280A, 299A.
Clinton	228A.
Coldwater	237A.
Collins	269A.
Columbia	244A.
Columbus	235C2, 276A, 280A.
Corinth	232A, 237A.
Drew	237A.
Ellisville	273C2.
Eupora	269A.
Fayette	249A.
Forest	223C.
Fulton	270C2.
Gluckstadt	269A.
Greenville	250C2, 264C1, 284C2.
Greenwood	256C, 270A, 282A.
Grenada	261A.
Gulfport	244A, 272A, 296A.
Hattiesburg	221A, 279C, 283C.
Hazlehurst	265A.
Heidelberg	257A.
Holly Springs	224A, 235A.
Houston	227C.
Indianola	245A, 288A.
Iuka	285A.
Jackson	234C, 238C, 242C, 259C, 275C.
Kosciusko	286C1.
Laurel	251A, 262C.
Leland	232A, 272A.
Lexington	273A, 292A.
Long Beach	233A.
Louisville	296A.
Lucedale	295A.
Lumberton	237A.
Macon	263A.
Magee	298C.
Marion	276A.
McComb	231C1, 289C.
Meridian	246C, 267C, 271A.
Monticello	271A.
Moss Point	285A.
Mound Bayou	271A.
Natchez	236C, 247A.
New Albany	278C, 292A.
Newton	292A.
Ocean Springs	276A.
Oxford	238A, 248C1, 296A.
Pascagoula	256C1, 292A.
Petal	292A.
Philadelphia	272A.
Picayune	292A.
Pontotoc	244A.
Poplarville	300C.
Prentiss	252A.
Quitman	252A.
Ripley	272A.
Starkville	221A, 291C2.
State College	282A.
Taylorsville	240A.
Tupelo	253C.
Tylertown	249A.
University	221A.
Vicksburg	254C, 266A, 294C.
Water Valley	268A.
Waynesboro	288A.
West Point	265A.
Wiggins	250A.
Winona	244A.
Woodville	240A.
Yazoo City	221A, 229A.

MISSOURI

	Channel No.
Aurora	261A.
Ava	290A.
Bethany	238C2.
Birch Tree	296A.
Bolivar	292A.
Bonne Terre	282A.
Boonville	257A.
Bowling Green	265A.
Branson	292A.
Brookfield	249A.
Buffalo	260A.
Butler	221A.
Cabool	292A.
California	232A.
Cameron	222A.
Canton	272A.
Cape Girardeau	264C, 275B.
Carrollton	266C.
Carthage	285A.
Caruthersville	276A.
Cassville	227A.
Centralia	221A.
Chaffee	284A.
Charleston	291A.
Chillicothe	280A.
Clayton	256C.
Clinton	237A, 241C.
Columbia	244A, 252A, 269A.
Crestwood	234C.
Cuba	271A.
De Soto	261A.
Dexter	272A.
Doniphan	248C2.
East Prairie	287A.
Eldon	224A, 270A.
Eldorado Springs	288A.
Farmington	253C.
Florissant	246C1.
Fulton	249A.
Gainesville	259C2.
Gordonville	257A.
Greenfield	228A.
Hannibal	225C1.
Harrisonville	264C.
Houston	257A.
Ironton	224A.
Jefferson City	261A, 295C.
Joplin	223C1, 273C.
Kansas City	227C, 235C, 243C, 259C, 271C, 277C, 282C.
Kennett	255C.
Kirksville	228A, 233C, 300C1.
Knob Noster	288A.
Lamar	260A.
Lebanon	221A, 279C.
Lexington	297C.
Liberty	293C1.
Louisiana	269A.
Macon	260A.
Malden	224A.
Mansfield	240A.
Marshall	275C1.
Marshfield	285A.
Maryville	257A.
Memphis	244A.
Mexico	238C.
Moberly	234C, 288A.
Monett	240A.
Monroe City	292A.
Montgomery City	280A.
Mount Vernon	294A.
Mountain Grove	224A.
Mountain View	244A.
Nevada	249A.
Osage Beach	228A.
Owensville	237A.
Ozark	225A.
Palmyra	250C2.
Perryville	294A.
Piedmont	285A.
Pleasant Hope	238C2.
Poplar Bluff	233C, 238C1, 244A.
Portageville	292A.
Potosi	249A.
Republic	258A.
Richmond	223A.
Rolla	232A, 287C1.
Salem	240A.
Sedalia	221A.
Seligman	237A.
Sikeston	249A.
Southwest City	262A.
Sparta	243A.
Springfield	234C, 247C, 254C, 268C.
St. Genevieve	289C.
St. James	258A.
St. Joseph	286C.
St. Louis	222C, 229C, 242C1, 251C, 273C, 277C1, 299C.
Steelville	244A.
Sullivan	265A.
Tarkio	228A.
Thayer	257A.
Trenton	221A.
Union	269A.
Vandalia	261A.
Versailles	236A.
Warrenton	260A.
Warsaw	229A, 249A.
Washington	283A.
Waynesville	249A, 272A.
Webb City	232A.
West Plains	230C1, 272A.
Willard	263A.
Willow Springs	262C2.

MONTANA

	Channel No.
Anaconda	249A.
Baker	263C1.
Belgrade	244A.
Billings	227C1, 231C, 246C1, 253C1, 275C1, 279C1.
Bozeman	229C1, 236C1.
Butte	224A, 231C, 238C.
Chinook	267C1.
Columbia Falls	240A.
Conrad	229A.
Cut Bank	274C1.
Deer Lodge	244A.
Dillon	252A.
East Helena	281C.
Forsyth	267C.
Glasgow	228A.
Glendive	243C1.
Great Falls	225C1, 233C1, 255C1, 262C, 291C, 297C.
Hamilton	240A.
Hardin	238C.
Havre	223C, 236C.
Helena	258C1, 266C, 287C.
Kalispell	246C, 253C, 280A.
Lewistown	240A.
Libby	269A.
Livingston	248C1.
Malta	261A.
Miles City	223C.
Missoula	227C, 235C, 261A, 273C1.
Plentywood	261A.
Red Lodge	257A.
Ronan	222C.
Scobey	239C1.
Shelby	242C1, 250C.
Sidney	226C1, 236C1.
West Yellowstone	243A.
Wolf Point	224A.

NEBRASKA

	Channel No.
Ainsworth	224A.
Albion	224A.
Alliance	271C1, 290C1.
Auburn	288A.
Aurora	247C2.
Beatrice	225C1.
Bennington	227A.
Blair	292A.
Bridgeport	267C.
Broken Bow	252A.
Central City	262C.
Chadron	234C, 248C1.
Columbus	228A, 266C1.
Cozad	283C1.
Crete	280A.
Crookston	241C.
Fairbury	257A.
Falls City	237A.
Fremont	288A.
Gordon	238C2.
Grand Island	239C1, 243C, 299C1.
Hastings	251C, 268C2.
Holdrege	249A.
Imperial	276A.
Kearney	255C1, 272A, 290C.
Kimball	261A.
Lexington	226C1.
Lincoln	236C2, 270C, 274C, 287A, 292A, 297C1.
McCook	230C2, 241C, 253C2, 287C1.
Nebraska City	249A.
Norfolk	234C, 294C.
North Platte	235C, 246C1, 278C.
O'Neil	275C1.
Ogallala	259C1, 293C1.
Omaha	222C, 231C, 241C, 260C, 264C, 283C, 290A.
Orchard	287C1.
Ord	280A.
Plattsmouth	293A.
Scottsbluff	225C, 231C1.
Seward	245C.
Sidney	254C1.
South Sioux City	296A.
Superior	280A.
Terrytown	245C1.
Wayne	285A.
West Point	300A.
Winnebago	289A.
York	285A.

NEVADA

	Channel No.
Boulder City	288A.
Carson City	234C, 247C, 251C.
Elko	228A, 237A.
Ely	224A, 269A.
Fallon	257A.
Gardnerville-Minden	257A.
Hawthorne	228A.
Henderson	231C, 238C, 263C.
Incline Village	261A.
Las Vegas	222C, 226C, 242C, 246C, 253C, 270C, 278C, 286C2, 293C.
North Las Vegas	282C.
Pahrump	298C.
Reno	225C, 238C, 269A, 283C, 289C, 295C.
Sparks	221A, 265A.
Tonopah	224A.
Winnemucca	224A.

NEW HAMPSHIRE

	Channel No.
Bedford	243A.
Berlin	279C.
Campton	289A.
Claremont	291B.
Concord	272A, 288A.
Conway	228A, 283A.
Dover	248B.

NEW HAMPSHIRE—Continued

	Channel No.
Exeter	296A.
Farmington	293A.
Franklin	231A.
Gorham	296A.
Hampton	271A.
Hanover	222A, 257A.
Haverhill	267A.
Henniker	256A.
Hillsboro	299A.
Hinsdale	285A.
Jackson	258A.
Keene	279B.
Laconia	252A.
Lebanon	263A.
Littleton	292A.
Manchester	239B, 266B.
Meredith	268A.
Moultonborough	295A.
Mount Washington	235C.
Nashua	292A.
Newport	269A.
Peterborough	221A.
Plymouth	261A.
Portsmouth	262B.
Rochester	244A.
Somersworth	254A.
Walpole	242A.
Winchester	254A.
Wolfeboro	285A.

NEW JERSEY

	Channel No.
Asbury Park	232A.
Atlantic City	236B, 245B, 279B, 297B1.
Avalon	232A.
Blairstown	292A.
Bridgeton	299B.
Camden	295B.
Canton	269A.
Cape May	272A.
Cape May Court House	288A.
Dover	288A.
Eatontown	292A.
Egg Harbor	285A.
Franklin	272A.
Long Branch	296A.
Manahawkin	261A.
Margate City	241A.
Millville	247B.
New Brunswick	252A.
Newark	234B, 262B, 290B1.
Newton	279B.
North Cape May	294A.
Ocean Acres	253A.
Ocean City	252A, 292A.
Paterson	226B.
Pleasantville	257A.
Point Pleasant	240A.
Princeton	277B.
Toms River	224A.
Trenton	233B, 248B, 268B.
Villas	254A.
Vineland	221A.
Wildwood	264B.
Wildwood Crest	226A.
Zarephath	256B.

NEW MEXICO

	Channel No.
Alamogordo	232A, 279C1, 288A.
Albuquerque	222C, 227C, 231C, 242C, 258C, 262C, 267A, 277C, 300C.
Armijo	296C2.
Artesia	225C.
Aztec	235C1.
Bayard	275C1.
Belen	249A.
Bloomfield	283C.
Carlsbad	221A, 281C, 291C2.
Clayton	228A.
Clovis	256C1, 260C1, 268C, 298C1.

NEW MEXICO—Continued

	Channel No.
Corrales	236A.
Deming	232A.
Espanola	272A.
Eunice	265A.
Farmington	225C1, 239C1, 245C, 271C.
Gallup	229C, 233C, 256C, 291C2.
Grants	250C2, 279C, 288C.
Hatch	266C.
Hobbs	231C1, 239C2, 275C.
Jal	296A.
La Luz	224A.
Las Cruces	258C, 276A, 280A.
Las Vegas	251C, 264C2.
Lordsburg	250C.
Los Alamos	253C 294C.
Los Lunas	273C2, 292A.
Lovington	269A.
Maljamar	*254C1, 286C.
Mesilla Park	285A.
Portales	237A.
Raton	232A.
Rio Rancho	269A.
Roswell	235C, 246C1, 263C, 284C2, 293C.
Ruidoso	228A.
Santa Fe	234C, 238C1, 247C, 281C, 286C, 290C.
Santa Rosa	240A.
Silver City	233A.
Socorro	224A.
Taos	260A, 269A.
Thoreau	260C.
Truth or Consequences	254C.
Tucumcari	224A.
White Rock	266A.

NEW YORK

	Channel No.
Albany	238B, 265A, 276A, 293B, 299B.
Amsterdam	249A.
Arlington	245A.
Attica	269A.
Auburn	295B.
Avon	227A.
Babylon	272A.
Baldwinsville	221A.
Bath	252A, 276A.
Bay Shore	276A.
Big Flats	249A.
Binghamton	251B, 256B.
Boonville	267A.
Briarcliff Manor	296A.
Buffalo	225B, 233B, 241B, 245B, 258B, 273B, 277B, 281B, 293B.
Canajoharie	227A.
Canandaigua	272A.
Canton	244A.
Cape Vincent	274A.
Carthage	276A.
Catskill	253A.
Center Moriches	241A.
Cherry Valley	270B.
Clifton Park	244A.
Clyde	229A.
Cobleskill	278B.
Corinth	228A.
Corning	254A, 291B.
Cortland	260B.
Dansville	230A.
Delhi	262A.
Depew	229B.
Deposit	234A.
Deruyter	286B.
Dundee	240A.
East Hampton	244A.
Ellenville	257A.
Elmira	224A, 232A.
Endicott	289B.
Port Plain	266A.
Frankfort	235B.
Fredonia	243A.
Fulton	284B.
Garden City	224A.
Geneva	269A.

NEW YORK—Continued

	Channel No.
Glens Falls	240A.
Gouverneur	237A.
Hammondsport	252A.
Hampton Bays	296A.
Hempstead	252A.
Herkimer	224A.
Highland	297A.
Homer	268A.
Honeoye Falls	297A.
Hoosick Falls	248A.
Hornell	221A, 287B.
Horseheads	265A.
Hudson	228A.
Hudson Falls	269A, 296A.
Hyde Park	249A.
Irondequoit	294A.
Ithaca	228A, 247B, 279B.
Jamestown	227B, 269A.
Johnstown	285A.
Kingston	232A.
Lake Placid	288A.
Lake Success	278B.
Liberty	240A.
Little Falls	288A.
Lowville	257A.
Manlius	237A.
Mechanicville	283A.
Middletown	224A.
Montauk	284A.
Monticello	252A.
Montour Falls	285A.
Mount Kisco	292A.
New Paltz	277A.
New Rochelle	228A.
New York	222B, 230B, 238B, 242B, 246B, 250B, 254B, 258B, 266B, 270B, 274B, 282B, 286B, 294B, 298B.
Newburgh	276A.
Niagara Falls	253B.
North Syracuse	265A.
Norwich	230B.
Ogdensburg	224A.
Olean	239B, 265A.
Oneonta	276A, 280A.
Onieda	292A.
Oswego	244A, 288A.
Owego	269A.
Palmyra	259A.
Patchogue	248B, 291B.
Patterson	288A.
Peekskill	264B.
Phoenix	271A.
Plattsburgh	260C, 278A.
Port Henry	221A.
Port Jervis	244A.
Potsdam	257A.
Poughkeepsie	221A, 241A, 268B, 284B.
Pulaski	269A.
Queensbury	289B1.
Ravena	233A.
Remsen	228A.
Rensselaer	280A.
Riverhead	280A.
Rochester	223B, 243B, 250B, 255B, 263B, 267B, 280A, 290A.
Rome	240A, 273B.
Rotterdam	252A.
Sag Harbor	221A.
Salamanca	252A.
Saranac Lake	269A.
Saratoga Springs	272A.
Schenectady	258B.
Seneca Falls	257A.
Sidney	265A.
Smithtown	232A.
Sodus	278A.
South Bristol Twsp	236B.
Southampton	237A.
Southhold	269A.
Stillwater	267A.
Syracuse	226B, 233B, 275B, 290A, 300B.
Ticonderoga	280A.
Troy	222B.
Tupper Lake	272A.
Utica	245B, 254B, 264A, 282B, 297B.
Vestal	277A.

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	Channel No.
Walton	221A.
Warrensburg	263A.
Waterloo	253A.
Watertown	228A, 248C.
Waverly	272A.
Webster	274A.
Wellsville	228A.
Wethersfield Townsh	299B.
White Plains	280A.
Whitehall	231A.
Woodstock	281A.
Wurtsboro	247A

NORTH CAROLINA

	Channel No.
Ahoskie	257A.
Albemarle	265A.
Asheboro	222C.
Ashville	260C.
Banner Elk	264A.
Bayboro	250A.
Belhaven	266C2.
Biltmore Forest	243A.
Black Mountain	295C.
Burgaw	260C.
Burlington	230C, 266C.
Charlotte	236C, 279C, 284C, 300C.
Clinton	296A.
Columbia	289C.
Concord	250C.
Dunn	276A.
Durham	286C, 296A.
Eden	233C1.
Edenton	261A, 272A.
Elizabeth City	229C, 244A.
Elizabethtown	289A.
Elkin	265A.
Fairbluff	287A.
Fairmont	265A.
Farmville	232A.
Fayetteville	251C1.
Forest City	227C.
Franklin	244A.
Fuquay-Varina	280A.
Gaston	250A.
Gastonia	270C.
Goldsboro	245C, 272A.
Greensboro	246C, 254C.
Greenville	300C.
Grifton	257A.
Hatteras	248C2.
Havelock	286C2.
Henderson	223C.
Hendersonville	273C1.
Hertford	285A.
Hickory	239C, 275C1.
High Point	238C1, 258C, 262C.
Hope Mills	278A.
Jacksonville	222C2, 254C2, 288A.
Kannapolis	259C.
Kinston	236C, 249A, 275A.
Laurinburg	243C.
Lexington	231C.
Louisburg	273A.
Lumberton	239C, 272A.
Manteo	252A, 256C2.
Morehead City	242C2.
Morganton	221A.
Moyock	221A.
Murfreesboro	252A.
Murphy	282A.
Nags Head	222A.
New Bern	232A, 270C1, 293C1.
Newport	277C1.
North Wilkesboro	247C.
Old Fort	282A.
Plymouth	240A.
Raleigh	234C, 241C, 268C, 275A.
Reidsville	271C1.
Roanoke Rapids	272A.
Robbinsville	240A.
Rocky Mount	221A, 253A, 264C.
Rose Hill	284A.
Roxboro	244A.
St. Pauls	295A.
Salisbury	293C.

NORTH CAROLINA—Continued

	Channel No.
Sanford	288A.
Scotland Neck	274A.
Semora	294A.
Shallottee	228A, 292A.
Shelby	241C.
Southern Pines	273A, 296A.
Southport	298C2.
Statesville	245C, 289C.
Tabor City	285A.
Tarboro	282C1.
Thomasville	252A.
Topsail Beach	280A.
Wallace	232A.
Wanchese	237A.
Warrenton	297A.
Washington	227C, 252A.
Waynesville	285A.
Whiteville	256C1.
Williamston	279C1.
Wilmington	247C, 265A, 274C1, 287A.
Wilson	291C.
Windsor	249A, 255A.
Winston-Salem	226C, 281C, 298C.
Wrightsville Beach	229A.

NORTH DAKOTA

	Channel No.
Beulah	250A.
Bismarck	225C, 233C, 243C, 254C.
Bottineau	270C1.
Carrington	252A.
Devils Lake	244A, 273C1, 278C1.
Dickinson	221A.
Fargo	229C, 250C1, 270C, 300C.
Grafton	265A.
Grand Forks	225C1, 234C1, 298C1.
Hettinger	228A.
Jamestown	227C1, 238C1.
Langdon	239A.
Lisbon	291C2.
Mandan	284C1.
Mayville	288A.
Minot	229C1, 246C, 260C1, 287C1, 295A.
Oakes	222C2.
Rugby	237A.
Sarles	290C.
Tioga	280A.
Valley City	265A.
Wahpeton	296A.
Williston	241C1, 253C1, 266C1.
Wishek	262C.

OHIO

	Channel No
Ada	235A.
Akron	243B, 248B.
Alliance	223B.
Archbold	240A.
Ashland	267B.
Ashtabula	246B.
Athens	288A.
Barnesville	228A.
Beavercreek	280A.
Bellaire	263A.
Bellefontaine	252A.
Bellevue	221A.
Belpre	296A.
Bowling Green	228A.
Bryan	265A.
Bucyrus	224A.
Byesville	249A.
Cadiz	292A.
Caldwell	285A.
Cambridge	244A.
Canton	231B, 251B, 295B.
Castalia	249A.
Celina	232A, 244A.
Chillicothe	227B, 232A.

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	Channel No
Cincinnati	223B, 227B, 231B, 253B, 270B, 274B, 286B.
Circleville	296A.
Cleveland	226B, 238B, 253B, 258B, 264B, 271B, 277B, 281B, 289B, 293B 300B.
Cleveland Heights	222B.
Clyde	265A.
Coal Grove	246A.
Columbus	222B, 234B, 242B, 246B, 250B, 259B, 298A.
Conneaut	288A.
Coshocton	257A.
Crestline	254A.
Crooksville	297A.
Dayton	256B, 284B, 299B.
Defiance	251B, 290A.
Delaware	300A.
Delphos	296A.
Delta	293A.
Dover	269A.
East Liverpool	282B.
Eaton	225B.
Edgewood	273A.
Elyria	297B.
Fairfield	235B.
Findlay	263B.
Fort Shawnee	298A.
Fostoria	244A.
Fredericktown	252A.
Fremont	256B1.
Gahanna	285A.
Galion	272A.
Gallipolis	268B.
Geneva	285A.
Georgetown	249A.
Gibsonburg	239A.
Greenfield	248A.
Greenville	293B.
Grove City	266A.
Hamilton	243B, 278B.
Harrison	282A.
Hillsboro	294B.
Holland	272A.
Huron	241A.
Ironton	296A.
Jackson	249A.
Johnstown	276A.
Kent	261A.
Kenton	237A.
Kettering	260B.
Lancaster	238B, 278A.
Lebanon	247A.
Lima	226A, 249A, 271B, 285A.
Logan	252A.
London	292A.
Lorain	285A.
Loudonville	299A.
Mansfield	287B, 291B.
Marietta	271B1.
Marion	232A, 295B.
Marysville	289A.
McConnelsville	265A.
Medina	235B.
Miamisburg	229B.
Middleport	221A.
Middletown	290B.
Milford	296A.
Millersburg	237A.
Montpelier	283A.
Moynt Vernon	229B.
Napoleon	276A.
Nelsonville	299A.
New Lexington	292A.
New Philadelphia	240A.
Newark	262B, 269A.
Niles	291A.
North Baltimore	299A.
Norwalk	237A.
Oak Harbor	247A.
Ottawa	292A.
Oxford	249A.
Paulding	259A.
Piqua	239B.
Port Clinton	233B.
Portsmouth	257A, 281C.
Ripley	258A.
St. Marys	277A.

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	Channel No
Salem	286B.
Sandusky	274B.
Shadyside	239A.
Shelby	261A.
Sidney	288A.
Springfield	264B, 275B.
Steubenville	278B.
Swanton	297A.
Sylvania	288A.
Tiffin	279B.
Toledo	223B, 260B, 268B, 284B.
Troy	245A.
Uhrichsville	260A.
Union City	248A.
Upper Arlington	255A.
Upper Sandusky	240A.
Upbana	269A.
Van Wert	255B.
Wapakoneta	221A.
Washington Courthouse	288A.
Wauseon	245A.
Waverly	265A.
Wellston	244A.
West Carrollton	221A.
West Union	276A.
Westerville	280A.
Willard	245A.
Wilmington	272A.
Wooster	283B.
Xenia	237A.
Youngstown	227B, 255B, 266B.
Zanesville	224A, 273B.

OKLAHOMA

	Channel No.
Ada	227C1, 244A.
Altus	228A, 300A.
Alva	259C1, 284C1, 289C2.
Anadarko	279C.
Antlers	281A.
Ardmore	239C1.
Atoka	276A.
Bartlesville	261A.
Bethany	285A.
Bixby	287A.
Bristow	285A.
Broken Arrow	221A.
Broken Bow	291C2.
Chickasha	288A.
Clinton	238C2, 295C1.
Comanche	244A.
Commerce	259A.
Cordell	229A, 257A.
Duncan	272A.
Durant	248C2, 296A.
Edmond	249A.
Eldorado	232A.
Elk City	232A, 243C1, 253C.
Enid	245C, 276A.
Eufaula	272A.
Frederick	240A.
Grove	257A.
Guymon	224A.
Healdton	289C2.
Heavener	223A.
Henryetta	258C1.
Hobart	290C.
Holdenville	293A.
Hollis	223A.
Hugo	237A.
Idabel	244A.
Ketchum	298C2.
Lahoma	239A.
Lawton	232A, 237A, 251C1, 268C1, 297C2.
Lindsay	286A.
Lone Grove	294A.
Madill	272A.
Mangum	221A.
Marlow	221A.
McAlester	267C1, 285A.
Miami	265A.
Muskogee	246C, 295C.
Norman	292A.
Nowata	232A, 268A.

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	Channel No.
Oklahoma City	223C, 234C, 241C, 255C, 263C, 270C, 274C, 281C, 299C.
Okmulgee	232A.
Owasso	291C.
Pauls Valley	249A.
Pawhuska	285A.
Perry	286A.
Ponca City	257A, 261A, 265A.
Poteau	250C, 297C.
Pryor	283C1.
Sallisaw	240A.
Sand Springs	272A.
Sapulpa	265A.
Seminole	288A.
Shawnee	236C.
Spencer	269A.
Stillwater	230C, 288A.
Sulphur	265A.
Taft	262A.
Tahlequah	269A.
Tishomingo	292A.
Tulsa	225C, 238C, 243C, 248C, 253C, 277C.
Vinita	240A.
Wagoner	271A.
Watonga	228A.
Weatherford	247C1.
Wilburton	279A.
Woodward	221A, 228A, 240A, 266C, 272A.

OREGON

	Channel No.
Albany	260C, 300C.
Altamont	267C.
Ashland	270C1.
Astoria	225C1.
Baker	237A, 284C.
Beaverton	277C.
Bend	231C, 248C1, 252A, 264C1, 289C2.
Brookings	237A.
Burns	224A.
Cave Junction	274C.
Coos Bay	254C2, 293C2.
Coquille	247C1.
Corvallis	268C, 291C.
Creswell	237A.
Enterprise	221A.
Eugene	233C, 241C, 250C, 256C.
Florence	284C.
Gold Beach	224A.
Gold Hill	262C1.
Grants Pass	245C.
Hermiston	257A.
Hood River	288A.
Klamath Falls	223C, 258C, 295C1.
La Grande	252A, 261A.
Lake Oswego	294C.
Lakeview	228A.
Lebanon	279C1.
Lincoln City	244A.
Medford	229C, 239C1, 278C.
Milton-Freewater	250A.
Myrtle Point	231A.
Newport	273C1.
North Bend	235C1.
Nyssa	254A.
Oakridge	221A.
Ontario	241C1.
Pendleton	278C1, 299C.
Phoenix	286C1.
Portland	222C, 229C, 238C, 246C, 253C, 258C1, 262C, 266C, 270C.
Prineville	236C1.
Redmond	275C, 298C1.
Reedsport	221A.
Roseburg	276A.
Salem	286C.
Seaside	234A.
Springfield-Eugene	226C.
Sutherlin	266A.
Sweet Home	296A.
The Dalles	249A, 283C.
Tillamook	281C2.

OREGON—Continued

	Channel No.
Toledo	296A.
Warm Springs	243C.

PENNSYLVANIA

	Channel No.
Allentown	264B, 281B.
Altoona	251B, 281A.
Avis	260A.
Barnesboro	223A.
Beaver Falls	294B.
Bedford	265A, 298A.
Bellefonte	237A.
Bellwood	280A.
Benton	240A.
Berwick	278A.
Bethlehem	236B.
Blairsville	292A.
Bloomsburg	293B.
Boyertown	298B.
Braddock	245B.
Bradford	261A.
Brookville	240A.
Butler	249A.
Canton	262B1.
Carbondale	232A.
Carlisle	272A.
Central City	269A.
Chambersburg	236B.
Charleroi	252A.
Clarion	224A.
Clearfield	230B1.
Coudersport	244A.
Cresson	232A.
Curwensville	275A.
Dallas	229A.
Danville	244A.
Dubois	271B, 297B.
Easton	241B, 260B.
Ebensburg	256B.
Edinboro	250A.
Elizabethville	263A.
Ellwood City	221A.
Emporium	257A.
Ephrata	286B.
Erie	234A, 260B, 272A, 279B.
Everett	282A.
Franklin	257A.
Freeland	276A.
Gettysburg	299B.
Greencastle	232A.
Greensburg	296A.
Greenville	296A.
Grove City	236B.
Harrisburg	235B, 247B, 257A, 281B.
Hazleton	250B.
Hershey	294B.
Hollidaysburg	285A.
Honesdale	237A.
Huntingdon	278A, 292A.
Indiana	276A.
Jenkintown	280A.
Jersey Shore	228A, 249A.
Johnsonburg	277A.
Johnstown	221A, 238B, 243B.
Kane	280A.
Lancaster	233B, 245B, 267B.
Lebanon	261A.
Lewisburg	242A.
Lewistown	240A, 288A.
Linesville	269A.
Lock Haven	221A.
Martinsburg	224A.
Masontown	295A.
McConnellsburg	279A.
Meadville	262B.
Mechanicsburg	228A.
Media	262B.
Mercer	244A, 280A.
Mercersburg	221A.
Mexico	223A.
Meyersdale	227A.
Mifflinburg	252A.
Mifflintown	296A.
Millersburg	255A.
Milton	265A.
Montrose	243B.

PENNSYLVANIA—Continued

	Channel No.
Mountaintop	246A.
Mount Carmel	259A.
Mount Union	258A.
Muncy	280A.
Nanticoke	221A.
New Kensington	264B.
North East	265A.
Northumberland	297A.
Oil City	253B1.
Oliver	235A.
Olyphant	239A.
Palmyra	221A.
Patton	234A.
Philadelphia	223B, 227B, 231B, 239B, 243B, 251B, 255B, 266B, 271B, 275B, 283B, 287B, 291B.
Philipsburg	290A.
Pittsburgh	225B, 229B, 233B, 241B, 259B, 268B, 273B, 284B, 290B, 300B.
Pittston	272A.
Port Allegany	235A.
Portage	289A.
Pottsville	270B.
Punxsutawney	288A.
Reading	273B.
Red Lion	241B.
Renovo	226A.
Reynoldsville	258A.
Ridgebury	245A.
Russell	276A.
Saegertown	232A.
Salladsburg	238A.
Scottdale	280A.
Scranton	258, 267B, 285A, 296A.
Shamokin	237A.
Sharon	275B.
Sharpsville	240A.
Smethport	292A.
Somerset	249A.
South Williamsport	257A.
Spangler	247A.
St. Marys	232A, 248B.
Starview	224A.
State College	233A, 276A.
Stroudsburg	228A.
Sunbury	231B.
Susquehanna	223A.
Tamaqua	288A.
Tioga	227A.
Tobyhanna	300A.
Towanda	237A.
Tunkhannock	299A.
Tyrone	266B.
Union City	292A.
Uniontown	257A.
University Park	244A.
Warren	222B.
Washington	237A.
Waynesboro	268B.
Waynesburg	276A.
Wellsboro	283B.
Whitneyville	296A.
Wilkes-Barre	225B, 253B.
Williamsport	274B, 286B, 300A.
York	277B, 289B.
York-Hanover	253B.

RHODE ISLAND

	Channel No.
Block Island	257A.
Middletown	262A.
Narragansett Pier	274A.
Providence	222B, 231B, 238B, 268B, 286B.
Wakefield-Peacedale	259A.
Westerly	279B.
Woonsocket	292A.

SOUTH CAROLINA

	Channel No.
Abbeville	225A.
Aiken	242C2, 258C2.
Allendale	228A.
Anderson	266C, 297C.
Andrews	265A.
Bamberg	221A.
Barnwell	269A.
Batesburg	237A.
Beaufort	254C1.
Bishopville	229A.
Bluffton	296A.
Camden	232A.
Cayce	244A.
Charleston	236C, 245C, 264A, 278C.
Cheraw	277C2.
Chester	257A.
Clearwater	252A.
Columbia	228A, 248C1, 276A, 284C.
Conway	230A, 281C1.
Darlington	288A.
Dillon	225C.
Easley	280A.
Elloree	262A.
Florence	292A.
Folly Beach	249A.
Gaffney	287C.
Georgetown	229A, 249A, 293C2.
Goose Creek	232A.
Gray Court	263C.
Greenville	223C, 229C, 233C.
Greenwood	244A, 278A.
Greer	277A.
Hampton	276A.
Hanahan	241C.
Hardeeville	266A.
Hartsville	253A.
Hilton Head Island	288A, 292A.
Honea Path	276A.
Johnsonville	286A.
Johnston	224A.
Kershaw	291A.
Kingstree	231A, 252A.
Lake City	261A.
Lancaster	296A.
Lexington	253A.
Loris	290A.
Manning	223C.
Marion	232A, 263A.
Moncks Corner	288A.
Mount Pleasant	283C2.
Mullins	296A.
Murrell's Inlet	233A.
Myrtle Beach	221A, 269A.
New Ellenton	274A.
Newberry	292A.
North Charleston	273C.
North Myrtle Beach	288A.
Orangeburg	275A, 280A, 294C1.
Pageland	272A.
Pamplico	271A.
Parris Island	221A.
Pawley's Island	262A.
Port Royal	259C.
Ravenel	269A.
Ridgeland	285A.
St. Andrews	272A.
St. George	298C.
St. Matthews	230A.
St. Stephen	290A.
Saluda	221A.
Seneca	251C.
Spartanburg	255C.
Summerville	228A.
Sumter	234A, 267C.
Surfside Beach	276A.
Walterboro	265A, 287A.
Wedgefield	257A.
West Columbia	261A.
Williston	234A.

SOUTH DAKOTA

	Channel No.
Aberdeen	231C1, 235C, 294C1.
Belle Fourche	240A.
Brookings	232A.
Canton	273A.

SOUTH DAKOTA—Continued

	Channel No.
Custer	286C2.
Deadwood	236C.
Faith	246C.
Gregory	268C1.
Hot Springs	244A.
Huron	221A.
Lowry	264C.
Madison	276A.
Milbank	282C1.
Mission	264A.
Mitchell	290C1, 297C1.
Mobridge	258C1.
Pierre	224A, 237A.
Pine Ridge	243A.
Rapid City	230C1, 250C1, 262C1, 282C.
Redfield	249A, 279C.
Reliance	233C.
Salem	263C2.
Sioux Falls	223C, 228A, 243C, 247C1, 261A, 270C2, 284C.
Sisseton	257A, 275C1.
Spearfish	266C, 297C.
Sturgis	226C.
Vermillion	272A.
Volga	272A.
Watertown	241C1, 245C.
Winner	229C1, 253C1.
Yankton	226C1, 281C1.

TENNESSEE

	Channel No.
Athens	269A.
Bolivar	244A.
Bristol	245C.
Brownsville	237A.
Calhoun	281A.
Camden	252A.
Carthage	272A.
Celina	229A, 268A.
Centerville	244A.
Chattanooga	222C, 243C, 293C.
Cleveland	237A, 264C.
Clinton	237A.
Columbia	269A.
Cookeville	234C, 252A.
Covington	228A.
Crossville	257A, 273A.
Dayton	285A.
Dickson	273C2.
Dyersburg	261A.
East Ridge	300A.
Elizabethton	257A.
Erwin	280A.
Etowah	276A.
Fayetteville	288A.
Franklin	261A.
Gallatin	283C1.
Gatlinburg	288A.
Germantown	232A, 298A.
Goodlettsville	246C2.
Graysville	239A.
Greensville	235C.
Harriman	224A.
Harrogate	243A.
Henderson	240A.
Hendersonville	221A.
Humboldt	272A, 287A.
Huntingdon	229A, 265A.
Jackson	268A, 276A, 281C.
Jamestown	276A, 280A.
Jefferson City	257A.
Jellico	274A.
Johnson City	268C.
Karns	226A.
Kingsport	253C, 285A.
Knoxville	248C, 278C, 283A, 299C.
Lafollette	285A.
Lawrenceburg	240A.
Lebanon	298C.
Lenoir City	228A.
Lewisburg	232A.
Lexington	257A.
Livingston	240A.
Lobelville	232A.
Loudon	256A, 287A.

TENNESSEE—Continued

	Channel No.
Manchaster	259C.
Martin	269A.
Maryville	239A.
McKenzie	295C1.
McKinnon	268A.
McMinnville	280A.
Memphis	246C1, 259C, 266C1, 274C1, 283C, 290C.
Milan	222C.
Minor Hill	221A.
Monterey	296A.
Morristown	240A.
Murfreesboro	242C.
Nashville	225C, 238C, 250C, 277C, 290C.
Oak Ridge	232A, 262C.
Oliver Springs	254A.
Oneida	288A.
Paris	288A.
Parsons	247A.
Pulaski	252A.
Red Bank	232A.
Ripley	231A.
Rockwood	269A.
Rogersville	293A.
Savannah	228A, 269A.
Selmer	230A, 288A.
Sevierville	271C1.
Seymour	242A.
Shelbyville	275C1.
Smithville	269A.
Soddy-Daisy	272A.
South Pittsburg	247C2.
Sparta	288A.
Spencer	254A.
Spring City	230A.
Springfield	232A.
Surgoinsville	282A.
Sweetwater	252A.
Tazewell	231A.
Trenton	249A.
Tullahoma	227C.
Union City	285A.
Wartburg	267A.
Waverly	285A.

TEXAS

	Channel No.
Abilene	223C2, 264C, 286C, 292A, 300C1.
Alamo	285A.
Alice	221A, 272A.
Alpine	224A.
Amarillo	226C1, 231C, 245C, 250C, 254C1, 270C, 276A.
Andrews	288A.
Anson	252A.
Arlington	235C1.
Atlanta	259C2.
Austin	229C, 238C, 251C1, 264C, 272A.
Ballinger	276A.
Bandera	252A.
Bastrop	296A.
Bay City	221A.
Beaumont	231C, 236C, 248C, 273C2, 300C.
Beeville	250A, 285A.
Belton	292A.
Big Lake	252A, 280A.
Big Spring	237A.
Bishop	296A.
Bloomington	295A.
Bonham	252A.
Borger	282C.
Bowie	264A.
Brady	237A.
Breckenridge	228A.
Brenham	231A, 292A.
Bridgeport	244A.
Brownfield	280A.
Brownsville	258C, 262C.
Brownwood	257A, 268C1, 281C1.
Bryan	252A, 258A, 285A.
Burkburnett	284C.
Burnet	296A.
Caldwell	236A.

TEXAS—Continued

	Channel No.
Cameron	267A, 276A.
Campwood	256A.
Canadian	276A.
Canyon	296A, 300C.
Carrizo Springs	221A, 228A.
Carthage	255C1.
Center	272A.
Childress	240A.
Clarksville	253A.
Clifton	277A.
Coleman	296A.
College Station	221A.
Colorado City	292A.
Columbus	252A.
Comanche	232A.
Commerce	221A.
Conroe	295C.
Copperas Cove	276A.
Corpus Christi	230C1, 234A, 238C, 243C1, 256C1.
Corsicana	300C1.
Cotulla	249A.
Crane	265A.
Crockett	224A, 228A.
Crystal City	232A.
Cuero	249A.
Daingerfield	295A.
Dalhart	240A.
Dallas	223C, 250C, 254C, 262C, 266C, 275C, 283C, 287C.
Del Rio	232A, 242C.
Denison	285A.
Denison-Sherman	269A.
Denton	256C, 291C.
Denver City	296A.
Devine	221A.
Diboll	238C1.
Dimmitt	240A.
Dumas	237A.
Eagle Pass	224A.
Eastland	244A, 249A.
Edinburg	281C, 300C.
Edna	269A.
El Campo	245C.
El Paso	222C, 226C, 230C, 234C, 238C, 242C, 248C, 260C, 271C.
Electra	236A.
Elgin	223A.
Fabens	276A.
Fairfield	221A.
Falfurrias	292A.
Farwell	222C1, 252A.
Floresville	232A.
Floydada	237A.
Fort Stockton	232A.
Fort Worth	231C, 242C, 258C, 298C1.
Fort Worth-Dallas	246C, 271C.
Fredericksburg	266C.
Freeport	277C.
Freer	240A.
Friona	236A.
Gainesville	233C, 300C2.
Galveston	285A, 293C.
Gatesville	252A.
Georgetown	243C2, 299A.
Giddings	268C2.
Gilmer	237A.
Gonzales	292A.
Graham	296A.
Granbury	294C.
Greenville	228A.
Groves	221A.
Hamilton	221A.
Hamlin	279C.
Harker Heights	288A.
Harlingen	233C, 241C.
Haskell	238C.
Hearne	232A.
Hebbronville	269A.
Henderson	261A.
Hereford	292A.
Higland Park-Dallas	279C.
Hillsboro	273C.
Hondo	253A.
Hooks	240A.
Houston	229C, 233C, 239C, 243C, 250C, 256C, 262C, 266C, 271C, 275C, 281C, 289C.

TEXAS—Continued

	Channel No.
Huntington	270A.
Huntsville	269A.
Jacksboro	229A.
Jacksonville	272A, 293C.
Jasper	265A, 272A.
Jefferson	283A.
Junction	228A.
Kennedy	221A.
Kermit	292A.
Kerrville	221A, 232A.
Kilgore	240A.
Killeen	222A, 227C.
Kingsville	224A, 249A.
La Grange	285A.
Lake Jackson	298C.
Lamesa	262C1, 284C1.
Lampasas	256C1.
Laredo	224A, 235C1, 251C1, 291A.
Levelland	288A.
Livingston	222C2.
Llano	285A.
Longview	247C2, 289C.
Lorenzo	251C2.
Lubbock	229C1, 233C1, 242C1, 258C1, 266C1, 273C1, 292A.
Lufkin	257A, 286C.
Luling	234C.
Madisonville	241C2.
Malakoff	240A.
Marfa	228A.
Marlin	244A.
Marshall	222A, 280A.
McAllen	245C, 253C.
Mc Camey	237A.
McKinney	237A.
Memphis	287C1.
Mercedes	292A.
Merkel	274C1.
Mexia	285A.
Midland	222C, 227C1, 236A, 277C1, 294C1.
Mineola	244A.
Mineral Wells	240A.
Mirando City	265A.
Mission	288A.
Monahans	260C1, 271C1.
Mount Pleasant	264C.
Muenster	293A.
Muleshoe	276A.
Nacogdoches	221A, 277C1.
Navasota	223A.
New Boston	278A.
New Braunfels	221A.
Nolanville	297A.
Odem	252A.
Odessa	241C2, 245C1, 250C, 256C.
Olney	248C2.
Orange	283C, 291C.
Ozona	232A.
Palacios	264A.
Palestine	244A, 252A.
Pampa	262C2.
Paris	230C2, 270C2, 299C2.
Pasadena	225C.
Pearsall	231A, 237A.
Pecos	247C, 252A.
Perryton	240A.
Pittsburg	245A, 276A.
Plainview	247C1, 280A, 295C2.
Pleasanton	252A.
Port Arthur	227C, 253C.
Port Isabel	266A.
Port Lavaca	227C1.
Portland	288A.
Post	297C2.
Premont	285A.
Quanah	265A.
Raymondville	269A, 289A.
Refugio	292A.
Rio Grande City	276A.
Robstown	260C1, 286A.
Rockdale	253A.
Rockport	272A.
Roma	249A.
Rosenberg	285A.
Rusk	249A.
San Angelo	225C1, 230C1, 234C, 248C1, 254C1, 270C1, 298C1.

TEXAS—Continued

	Channel No.
San Antonio	225C, 241C, 247C, 258C, 262C, 270C1, 274C1, 283C1, 298C.
San Augustine	260A.
San Diego	290A.
San Marcos	278C.
San Saba	244A.
Seabrook	221A.
Seguin	287C.
Seminole	292A.
Seymour	230C2.
Shamrock	224A.
Sherman	244A, 281A.
Silsbee	269A.
Sinton	267C1, 279C1.
Slaton	225A.
Snyder	269A.
Sonora	221A.
South Padre Island	224A, 237A.
Spearman	252A.
Stamford	221A.
Stanton	290A.
Stephenville	252A, 289C1.
Sulphur Springs	240A.
Sweetwater	244A.
Tahoka	237A.
Taylor	221A.
Temple	269A, 285A.
Terrell	296A.
Terrell Hills	294C.
Texarkana	251C, 273C1.
Tulia	285A.
Tyle	259C1.
Tyer	221A, 226C, 268C, 281C2.
Uvalde	229A, 272A, 285A.
Vernon	272A.
Victoria	222A, 236C1, 254C, 265A, 300C1.
Waco	233A, 238C, 248C, 260C, 296A.
Whitehouse	297C2.
Wichita Falls	225C, 260C1, 277C, 288A, 292A.
Winfield	249A.
Winnsboro	285A.
Winters	240A.
Yoakum	272A.

UTAH

	Channel No.
Blanding	221A.
Bountiful	258C.
Brian Head	251C.
Brigham City	264C, 295C.
Cedar City	223C, 235C.
Centerville	289C2.
Coalville	223A.
Delta	239C1.
Kanab	266C1.
Logan	225C1, 233C1.
Manti	286C.
Midvale	274C.
Moab	244A.
Nephi	224A.
Ogden	238C, 250C, 266C, 270C.
Orem	298C.
Payson	222A.
Price	252A, 265A.
Provo	235C, 241C.
Richfield	229C.
Roosevelt	230A, 253C2.
Roy	300C.
St. George	228A, 259C.
Salt Lake City	227C, 231C, 246C, 254C, 262C, 278C, 282C.
Smithfield	280A.
Spanish Fork	293C1.
Tooele	221A.
Torrey	253A.
Tremonton	285A.
Vernal	290C.

VERMONT

	Channel No.
Barre	296A.
Bellows Falls	296A.
Bennington	232A.
Brattleboro	224A, 244A.
Burlington	225C, 255C1, 300C.
Derby Center	221A.
Killington	287C2.
Lyndon	252A.
Manchester	274B.
Middlebury	265A.
Montpelier	284C2.
Randolph	272A.
Rutland	233A, 246C2, 251C2.
South Burlington	237A.
Springfield	228A.
St. Albans	272A.
St. Johnsbury	288A.
Stowe	269A.
Vergennes	294C2.
Warren	241A.
Waterbury	276A.
West Rutland	298A.
White River Junction	237A.
Wilmington	264A.
Woodstock	230A.

VIRGINIA

	Channel No.
Abingdon	224A.
Alberta	299A.
Alta Vista	288A.
Amherst	300C1.
Appomattox	274B, 296A.
Arlington	286B.
Ashland	261A.
Bedford	295A.
Berryville	288A.
Big Stone Gap	228A.
Blacksburg	285A.
Blackstone	228A.
Bluefield	292A.
Bridgewater	286A.
Broadway	238A.
Buena Vista	244A.
Buffalo Gap	288A.
Cape Charles	241B.
Charlottesville	224A, 237A, 248B, 298A.
Chase City	260A.
Chesa-Portsm-Va Bea	271A.
Chester	221A.
Christiansburg	264A.
Churchville	294A.
Clarksville	252A.
Clifton Forge	280A.
Clinchco	226A.
Coeburn	259A.
Colonial Beach	240A.
Colonial Heights	237A.
Covington	265A.
Crewe	284C1.
Crozet	272A.
Culpeper	276A.
Danville	277C1.
Elkton	252A.
Emporia	258A.
Exmore	291A, 298B.
Farmville	239B.
Franklin	269A.
Fredericksburg	227B, 268B.
Front Royal	237A, 257A.
Galax	251C.
Gloucester	256A.
Gretna	292A.
Grundy	249A.
Hampton	267B.
Harrisonburg	264B, 282B.
Hot Springs	296A.
Kilmarnock	269A.
Lawrenceville	255A.
Lebanon	297A.
Louisa	288A.
Luray	280A, 292A.
Lynchburg	252A, 261A, 269A, 290A.
Manassas	294B.
Marion	230C, 272A.
Martinsville	242C.

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	Channel No.
Mechanicsville	224A.
Mount Jackson	245A.
Narrows	267A.
Newport News	247B.
Norfolk	239B, 254B, 259B, 263B, 275B, 283B, 287B.
Norton	292A.
Onley-Onancock	277B.
Orange	244A.
Pennington Gap	288A.
Petersburg	257A, 262A.
Pound	272A.
Pulaski	296A.
Radford	269A.
Richlands	288A.
Richmond	233B, 251B, 266A, 271B, 279B, 293B.
Roanoke	222C, 235C, 256C, 287A.
Rocky Mount	260A.
Ruckersville	221A.
Salem	228A.
Saltville	291A.
South Boston	248C1.
South Hill	288A.
Spotsylvania	257A.
Staunton	228A, 232A, 259B.
Strasburg	285A.
Suffolk	225B, 295C.
Tappahannock	288A.
Tazewell	261A.
Vinton	268A.
Virginia Beach	235B.
Warrenton	232A, 299B.
Warsaw	265A.
West Point	300A.
Williamsburg	243B.
Winchester	223B, 273B.
Windsor	299A.
Woodbridge	290B.
Woodstock	240A.
Yorktown	231B.

WASHINGTON

	Channel No.
Aberdeen	257A, 284C1.
Bellevue	223C.
Bellingham	225C, 282C.
Bremerton	295C.
Camas	234A.
Cashmere	266A.
Centralia	275C.
Chelan	228A.
Cheney	266C.
Clarkston	231C.
Colfax	272A.
Colville	221A.
Davenport	273A.
Dayton	223A.
Deer Park	296A.
East Wenatchee	249A.
Edmonds	287C.
Ellensburg	237A, 276A.
Ephrata	240A.
Forks	280A.
Goldendale	272A.
Grand Coulee	253C2.
Grandview	265A.
Hoquiam	237A.
Kennewick	287C.
Long Beach	232A.
Longview	288A.
Lynden	293C.
Medical Lake	237A.
Moses Lake	257A, 262C1.
Naches	245A.
Newport	285A.
Olympia	241C.
Omak	226C2.
Opportunity	241C.
Othello	249A.
Pasco	252A.
Prosser	269A.
Pullman	258C, 282C1.
Quincy	244A.
Raymond	249A.
Richland	235C, 274C, 293C.

WASHINGTON—Continued

	Channel No.
Rock Island	258A.
Seattle	227C, 231C, 235C1, 239C, 243C, 251C, 255C, 260C, 264C, 268C, 273C, 299C.
Spokane	225C, 229C, 251C, 255C, 260C, 280A, 289C, 300C.
Sunnyside	244A.
Tacoma	247C, 279C, 291C.
Toppenish	225C2.
Wisp	292A.
Walla Walla	227C1, 239C, 246C, 265A.
Wenatchee	271C, 285A.
Yakima	233C1, 252A, 257A, 281C, 289C1, 297C.

WEST VIRGINIA

	Channel No.
Beckley	258B, 279B.
Berkeley Springs	228A.
Bethlehem	288A.
Bluefield	283C.
Bridgeport	281A.
Buckhannon	228A, 267B.
Charles Town	252A.
Charleston	241B, 248B, 260B, 274B.
Clarksburg	224A, 285A, 293B.
Danville	223A.
Dunbar	233A.
Elkins	237A, 257A.
Fairmont	232A, 250B.
Fisher	279A.
Grafton	240A.
Hinton	272A.
Huntington	263B, 277B, 300B
Keyser	231B, 296A.
Kingwood	244A.
Lewisburg	288A.
Logan	270B.
Mannington	274A.
Martinsburg	248B.
Matewan	294A.
Miami	297B.
Milton	292A.
Morgantown	261A, 270B.
Moundsville	243A.
Mount Gay-Shamrock	234A.
Mount Hope	290B.
Mullens	224A.
New Martinsville	280A.
Oak Hill	231B.
Parkersburg	236B, 257A, 276A.
Petersburg	269A.
Pocatalico	254A.
Point Pleasant	258A.
Princeton	240A, 265A.
Rainelle	244A.
Ravenswood	291A.
Ripley	252A.
Romney	261A.
Ronceverte	249A.
Salem	289A.
South Charleston	265A.
St. Albans	286B.
St. Marys	230B1.
Summersville	225B.
Sutton	246B1.
Vienna	261A.
Weston	272A.
Westover	265A.
Wheeling	247B, 254B, 298B.
White Sulphur Springs	227A.
Williamson	243B.

WISCONSIN

	Channel No.
Algoma	243A.
Antigo	287C1.
Appleton	289C.
Ashland	244A.
Baradoo	235B.

WISCONSIN—Continued

	Channel No.
Beaver Dam	237A.
Berlin	272A.
Black River Falls	259A.
Bloomer	236A.
Brillion	242A.
Brookfield	295A.
Chippewa Falls	288A.
Cleveland	276A.
Clintonville	221A.
Columbus	263A.
Crandon	244A.
De Pere	240A.
Dodgeville	257A.
Durand	240A.
Eagle River	232A.
Eau Claire	231C1, 264C1, 283C.
Evansville	290A.
Fond Du Lac	296A.
Fort Atkinson	297B.
Green Bay	253C1, 266C.
Hartford	285A.
Hayward	221A, 269A.
Janesville	260B.
Kaukauna	285A.
Kenosha	236B.
Kewaunee	224A.
LaCrosse	227C, 239C2, 285A.
Ladysmith	224A, 279C.
Lancaster	249A.
Lomira	294A.
Madison	251B, 268B, 273B, 281B.
Manitowoc	221A.
Marinette	236C1.
Marshfield	293C1.
Mauston	221A.
Mayville	259A.
Medford	257A.
Menomonee Falls	252A.
Monomonie	221A.
Merrill	228A.
Middleton	292A.
Milwaukee	227B, 233B, 239B, 243B, 247B, 256B, 271B, 275B, 299B.
Minocqua	240A.
Mishicot	298A.
Monroe	229B.
Neehah-Menasha	232A, 261A.
Neillsville	224A, 298C1.
Nekoosa	229A.
New Holstein	258A.
New London	228A.
New Richmond	296A.
Oconto	296A.
Oshkosh	244A, 280A.
Park Falls	252A.
Platteville	296A.
Plymouth	283A.
Port Washington	261A.
Portage	261A.
Prairie Du Chien	232A.
Racine	221A, 264B.
Reedsburg	285A.
Rhinelander	248C1, 262C2.
Rice Lake	242C1, 249A.
Richland Center	265A.
Ripon	241A.
River Falls	292A.
Rudolph	260A.
Sauk City	242B1.
Seymour	282A.
Shawano	257A.
Sheboygan	249A.
Shell Lake	237A.
Sparta	246C1.
Spencer	221A.
Spooner	292A.
Stevens Point	250C1, 285A.
Sturgeon Bay	230C1, 249A, 259C2.
Sturtevant	284A.
Sun prairie	221A.
Superior	273C1.
Suring	274C1.
Tomah	233A, 241A, 255C.
Tomahawk	224A.
Trempealeau	288A.
Two Rivers	272A.
Viroqua	272A.
Washburn	290C1.
Watertown	231B.

WISCONSIN—Continued

	Channel No.
Waukesha	291B.
Waupaca	224A.
Waupun	257A.
Wausau	238C, 270C, 300C.
Wautoma	222A.
Wauwatosa	279B.
West Bend	223B.
West Salem	261A.
Whitehall	272A.
Whitewater	283A.
Whiting	244A.
Wisconsin Dells	296A.
Wisconsin Rapids	277C1.

WYOMING

	Channel No.
Afton	252A.
Buffalo	224A.
Casper	233C, 238C, 279C, 295C.
Cheyenne	250C, 265C1, 292A.
Cody	250C.
Diamondville	287C2.
Douglas	257A.
Evanston	292A.
Gillette	245C1, 264C1.
Greybull	262C.
Jackson	239C, 245C1.
Kemmerer	297A.
Lander	248C1.
Laramie	236C, 275C, 288A.
Lost Cabin	256C.
Newcastle	257A.
Powell	233C, 281C.
Rawlins	224A.
Riverton	226C1, 230C1.
Rock Springs	236C, 243C, 283C.
Saratoga	260C.
Sheridan	235C1, 243C2.

WYOMING—Continued

	Channel No.
Sundance	276A.
Thermopolis	252A, 269A.
Torrington	252A.
Wheatland	269A.
Worland	241C2.

AMERICAN SAMOA

	Channel No.
Leone	266C1.
Pago Pago	221A.

CENTRAL MARIANAS

	Channel No.
Saipan	230A.

GUAM

	Channel No.
Agana	230C2, 238C2, 248C2, 262C2.

PUERTO RICO

	Channel No.
Aguada	288A.
Aguadilla	225B, 262B.
Arecibo	293B1, 297B.
Bayamon	234B, 264B.
Cabo Rojo	272A.

PUERTO RICO—Continued

	Channel No.
Caguas	277B.
Camuy	275B.
Carolina	299B.
Cidra	249A.
Corozal	223B.
Fajardo	243B.
Guayama	295B.
Hormigueros	221A, 291A.
Isabela	268B.
Lajas	279B.
Luguillo	221A.
Manati	245B.
Maricao	241B.
Mayaguez	231B, 248B, 256B.
Naguabo	225A.
Ponce	227B1, 266B, 270B, 286B.
Quebradillas	252A.
Rio Grande	247A.
Rio Piedras	239B.
San German	236B.
San Juan	229B, 253B, 260B, 273B, 284B, 289B.
Utuado	281B.
Vieques	255B.

VIRGIN ISLANDS

	Channel No.
Charlotte Amalie	241B1, 246B, 250B, 271B, 282B, 287B.
Christiansted	232A, 236B, 258B, 262B, 291B.
Cruz Bay	222B.

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federal register

Friday
October 23, 1987

Part III

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Product Valuation Regulations and Related Topics; Second Further Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service, Interior.

ACTION: Second further notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) of the Department of the Interior (DOI) is issuing this Second Further Notice of Proposed Rulemaking to obtain additional public review and comments on its gas product valuation regulations applicable to production from Federal and Indian oil and gas leases. Attached to this notice as an appendix is a draft of the gas valuation regulations in final form, together with a draft of the preamble for the final rule.

DATE: Comments must be received on or before November 23, 1987.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On February 13, 1987, 52 FR 4732, MMS issued a notice of proposed rulemaking to amend the regulations governing the valuation of gas from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received almost 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Sixteen persons made oral presentations at these hearings.

Because of the complexity of the regulations, and in accordance with MMS's understanding with the Congress, MMS issued a Further Notice of Proposed Rulemaking on August 17, 1987 (52 FR 30776), which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain additional public comments during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* of June 27, 1987, pages H5651-H5666.

The public comment period on the first further notice of proposed rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, Sept. 2, 1987). On September 21, 1987, MMS issued a Notice of Intent to Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors, and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where necessary, to reach compromises.

As a result of the various meetings MMS held with interested groups and from MMS's review of the comments, changes have been made to the draft final regulations. Some of these changes are significant. Also, MMS still has some issues on which it would like further technical review and comments from interested persons before issuing a final rule. Therefore, MMS is issuing this Second Further Notice of Proposed Rulemaking with a revised draft final rule attached.

MMS requests that commenters not simply resubmit comments already provided on the proposed rules or in response to the first Further Notice of Proposed Rulemaking with the first draft final rule attached thereto. All comments received since publication of the first proposed rulemaking on February 13, 1987, will be included in this rulemaking record. Additional comments should be directed to the provisions of the draft final rule in the appendix. Commenters are requested to identify, by section, the provision of the draft final rule to which a comment is directed.

II. Specific Comments Requested

Commenters may comment on all issues concerning the draft final rules. However, there are certain questions on which MMS specifically would like comments.

In response to suggestions principally from the States and Indians that MMS should follow an aggressive valuation policy for Federal and Indian leases, some industry commenters have stated that MMS should take the royalty in kind. In other words, if MMS thinks that the lessee is not receiving proper value for its product sales, MMS (or the Indian lessor) should take the royalty share in kind and sell it for whatever price it can get. Although MMS and most Indian lessors do have the option under the lease to take royalty in kind, MMS perceives several problems with this option, particularly as it relates to gas (oil is not a problem because, as recently as 1980, MMS took almost half of Federal oil royalties in kind for sale under the royalty-in-kind program). First of all, most audit issues relate to prior periods. One hundred percent of the production already has been disposed of by the lessee. Thus, it would appear that the lessor no longer has the option to take royalty in kind but must be paid royalty based on the value of production. Second, because gas cannot be readily stored, MMS and Indian lessors could face marketing problems. However, if a lessee has a long-term contract and MMS is aware that prospectively it will find the lessee's sale price unacceptable as a royalty value, taking royalty in kind is a more viable option. MMS would like commenters to address the feasibility of a larger scale royalty-in-kind program, particularly for gas.

In the draft final rules published August 17, 1987, MMS included certain extraordinary cost allowances related to production of gas and gas processing. See §§ 206.152(i), 206.153(i), and 206.158(d)(2) of the draft final rule for gas (52 FR 30776). Although most industry commenters supported these provisions and even advocated liberalizing their application, many State and Indian commenters believed that these sections should be removed. Generally, these commenters stated that the costs included in these sections historically had not been allowed by MMS as costs necessary to place production in marketable condition and it was inappropriate to allow them now.

MMS has retained the three sections in the draft final rules attached hereto as an appendix. However, MMS still is uncertain whether these sections should be retained in the final rules. Comments are specifically requested on this issue.

In the definition of "arm's-length contract" included in § 206.151 of the draft final rules, MMS states that "* * * contracts between relatives, either by blood or by marriage, are not arm's-length contracts." Some commenters thought that the term "relatives" needed to be limited because a distant relationship should not cause a contract to be considered a non-arm's-length contract. MMS requests comments on whether some practical limit can be placed on the term "relative."

The Further Notice of Proposed Rulemaking of August 17, 1987 (52 FR 30776), specifically requested comments on certain broader issues, as follows:

> Besides specific comments on the draft final rule, MMS also requests commenters to address whether or not there are additional requirements or approaches which would improve the royalty payment process. The MMS believes it has developed a set of rules which will lead to the proper payment of royalties, but given the interest and concerns raised by this rulemaking, MMS would like to learn of all approaches which will reduce underpayments and minimize any abuse in payment and collection of royalties. MMS would specifically like comments on the ability of auditors to determine compliance with these regulations. MMS also would like commenters to address the extent to which these draft rules are responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office and the Department's Office of Inspector General.

While MMS received many comments on provisions of the draft final rule which bear upon these broader issues, it did not receive any comments specifically addressing the issues themselves. However, MMS also received requests to extend the comment period to allow more time to prepare and submit comments on one or more of these issues. To emphasize its interest in these issues, MMS is again specifically asking for comments on these broader issues and believes that, overall, the time allowed from August 17, 1987, to the close of the current comment period should be sufficient for that purpose.

MMS also would like additional comment on certain issues related to allowances for some post-production costs and issues related to allocation of transportation costs among products. *See* the Second Further Notice of Proposed Rulemaking for the oil valuation regulations, published elsewhere in today's **Federal Register.**

III. Other Issues

The draft regulations refer to a form for transportation allowances (Form MMS–4295) and for processing allowances (Form MMS–4109). Many commenters requested an opportunity to review the forms while commenting on the rules. Copies of the forms may be requested from MMS by submitting a request to the address listed in the **ADDRESS** section of this preamble.

In the draft final rules, there are many references to audits and the closing of audit periods. MMS intends to issue further guidelines on the closing of audit periods and how valuation determinations will be affected.

There are many sections of the draft final regulations which are duplicative. For example, many of the provisions related to calculation of transportation and processing allowances are identical. Likewise, the transportation allowance rules for oil and gas are the same. As another example, the valuation rules in §§ 206.152 and 206.153 for processed and unprocessed gas have virtually identical provisions. MMS prepared the rules in this manner at the request of the Royalty Management Advisory Committee, which wanted completely separate rules for the various products. However, the rules as drafted are very long and could be streamlined. Also, duplicative provisions make maintenance of the rules more difficult since care must be taken to change all corresponding provisions. Therefore, MMS specifically would like comment on whether the final rules should be consolidated where practicable.

IV. Procedural Matters

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations; to clarify DOI gas royalty valuation policy and gas transportation and processing allowance policy; and to provide for consistent royalty valuation policy among all leasable minerals. Because the proposed rule principally consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities.

Lessee reporting requirements will be approximately $250,000. All gas sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments must be received by 4:30 p.m. of the day specified in the **DATE** section to the appropriate address indicated in the **ADDRESS** section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Gas Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room C406, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0075.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: October 19, 1987.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

Appendix—Draft Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Royalty Valuation Regulations and Related Topics

Agency: Minerals Management Service (MMS), Interior.

Action: [Draft] Final rule.

Summary: This rulemaking provides for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil ano gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

Effective date: February 1, 1988 [tentative].

For Further information contact: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

Supplementary information: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On February 13, 1987, 52 FR 4732, MMS issued a notice of proposed rulemaking to amend the regulations governing the valuation of gas from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received almost 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Sixteen persons made oral presentations at these hearings.

Because of the complexity of the regulations, and in accordance with MMS's understanding with the Congress, MMS issued a further notice of proposed rulemaking on August 17, 1987 (52 FR 30776) which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* of June 27, 1987, pages H5651-H5666.

The public comment period on the first further notice of proposed rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, Sept. 2, 1987). On September 21, 1987, MMS issued a Notice of Intent to Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors, and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where necessary, to reach compromises.

[Tentative: In a further effort to ensure that all of the interested constituencies had a full and fair opportunity to comment upon the gas valuation rules following the several meetings and MMS's review of the written comments, MMS issued a second further notice of proposed rulemaking and second draft final rules. 52 FR ____ (October ____, 1987). Public comments were received for 30 days.]

The MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee (RMAC), proposed rules, and further notices of proposed rulemaking with draft final rules. A complete account of the RMAC process is included in the preamble to the proposed regulations issued in February 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of gas from Federal and Indian leases. These regulations will apply prospectively to gas production on or after the effective date specified in the DATES section of this preamble.

II. Purpose and Background

The MMS has revised the current regulations regarding the valuation of gas to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202 and 206.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

(3) Placement of the gas royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for production removed or sold from the lease.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation and processing costs for gas to aid in the calculation of proper royalty due the lessor.

A number of sections have been renumbered and/or moved to a new subpart. Sections 202.150, 202.151, 202.152, 206.150, 206.151, and 206.152 have been revised. In addition, §§ 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 have been added to Subpart D of Part 206.

Several general provisions which relate to both oil and gas have been added to Part 202. These provisions are included in the final rule to amend the oil valuation regulations recently published by the Department [____ FR _____, _____, 1987].

This rule applies prospectively to gas production on or after the effective date of this rule. It supersedes all existing gas royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations, and Notices to Lessees (NTL) issued over past years, particularly NTL-5 (42 FR 22610, May 4, 1977, as amended; 51 FR 26759, July 25, 1986). Specific guidelines governing reporting requirements consistent with these new gas valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. Redesignations:	
Sections 202.150, 202.151 and 202.152 under Subpart D are redesignated as new §§ 202.100, 202.53, and 202.52, respectively.	This administrative action more appropriately locates within 30 CFR the information contained in these sections.
II. Removals:	
Sections 206.106 and 206.107 are removed from Subpart C of Part 206	These requirements have been incorporated into § 202.150 and 202.151.
III. Additions:	
New §§ 202.150, 202.151, and 202.152 are added to Subpart D of Part 202. New §§ 206.10, 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 are added to Subparts A and D of Part 206.	These new sections provide gas valuation standards and procedures and identify allowable costs for transportation and processing to be deducted from gas royalty value.

The rules in § 206.150 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease term, statute, or treaty governs to the extent of the inconsistency. The same principle applies to Federal leases.

A separate gas definitions section applicable to the royalty valuation of gas is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241.

III. Response to General Comments Received on the Proposed Gas Valuation Regulations and Related Topics

The notice of proposed rulemaking for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes was published in the **Federal Register** on February 13, 1987 (52 FR 4732). This was followed by a Further Notice of Proposed Rulemaking (52 FR 30776, Aug. 17, 1987), and a Second Further Notice of Proposed Rulemaking (52 FR _____, _____, 1987). Over 150 comments were received from interested persons including Indian lessors, the States, and industry.

The Indian commenters included tribal groups, a tribal council, and Indian trade groups. Various government agencies, including State entities, Federal agencies, State associations, State Governors, and local governments also commented. Industry commenters included oil and gas companies, individual commenters, and several industry trade groups.

Many commenters made comments on the basic issues and principles underlying the proposed rulemaking without addressing specific sections of the proposed regulations, but addressing the basic premise underlying the proposed valuation methodology.

The respondents were generally composed of two groups, with industry generally on one side and States, Indians, and local governments on the other. Industry generally endorsed the basic principles underlying the proposed regulations. Although the industry commenters objected to many of the specific provisions of the proposed rules, they stated generally that a market-oriented approach based on gross proceeds from arm's-length contracts would fulfill MMS's goals of creating royalty certainty, fairness, and long-term revenue maximization. Some industry commenters advocated the adoption, in total, of the Royalty Management Advisory Committee (RMAC) Gas Panel's recommendations as the only proper solution to the valuation issue. States, Indians, and local governments, on the other hand, generally objected to the basic premise of the proposed valuation methodology that gross proceeds from arm's-length contracts represent value. They also objected to other parts of the proposed regulations for a variety of reasons.

The general comments raised by industry, States, and Indians may be categorized similarly to those raised with respect to the oil valuation regulations: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts. Because the general issues raised and MMS's responses thereto are so similar, MMS hereby incorporates the discussion in the General Comments portion of Section III of the Preamble to the final oil valuation regulations (____ FR _____, _____, 1987) as if fully and completely set forth herein.

IV. Section-by-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 4732, Feb. 13, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal or, in some instances, from the draft final rules. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning." *Andrews v. Commissioner of Internal Revenue*, 135 F.2d 314,317 (2nd Cir. 1943). The word "value" has sometimes been modified by the words "fair market", although the mineral leasing law provisions on "value of production" do not include these words. But these adjectives do not really clarify the word value. The word "fair" can modify the word value as in "fair value" or it can modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term fair market value, however, has been generally accepted to be the price received by a willing and knowledgeable seller not obligated to sell from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purpose of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system in which individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions which are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of the regulations is to define the value of production, for royalty purposes, for production from Federal and Indain lands. Value can be determined in different ways, and these rules explain how value is to be established in different circumstances.

Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to arm's-length contracts are often accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area who have opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

Section 202.150 Royalty on gas.

Indian commenters recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment in kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty in kind. However, because requests to take royalty in kind may involve operational difficulties for the lessee, as well as a change in accounting and reporting procedures necessary for MMS to properly monitor royalty obligations, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty in kind, he or she must contact MMS. The MMS then will make arrangements with the lessee for the in-kind payment.

The MMS also has added a provision clarifying that, when royalties are paid in value, the royalties due are equal to the value, for royalty purposes, multiplied by the royalty rate.

Section 202.150(b)

The MMS received many industry comments stating that unavoidably flared gas should be exempt from royalty requirements. Commenters stated that the definition of the term "unavoidably lost" should be incorporated in § 206.151, Definitions. The commenters also recommended that this paragraph address the procedures for obtaining permission to use gas off-lease for the benefit of the lease.

One industry commenter recommended deletion of the phrase "when such off-lease use is permitted by the appropriate agency." The commenter recommended that legal interpretations affecting the inclusion of any on-lease or off-lease use could be more appropriately covered in the MMS Payor Handbook.

Industry commenters also stated that on-lease or off-lease royalty-free gas use should also include gas used in post-production operations, including boosting residue gas delivery pressure and other operations incidental to marketing, because this gas is used for the benefit of the lease.

One industry commenter recommended the inclusion of the following language: "Gas used for the benefit of the lease is royalty free, which includes gas used in lease equipment located on a platform or in a central facility serving multiple leases. Such platform or central facility may be located on a lease other than the one physically providing gas used."

One industry commenter did not agree that the standard for royalty liability detailed in this paragraph is consistent with section 308 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1756, which limits royalty liability to loss or waste owing to negligence or noncompliance with operational requirements.

Two industry commenters proposed that MMS consider expansion of the clause to include all gas used "on or off a lease as long as it is for the benefit of the lease."

Industry commenters endorsed MMS's decision that gas used offlease for the benefit of the lease is royalty-free when such use is permitted by the appropriate agency.

Some Indian commenters also recommended that any royalty-free use of gas be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty-free operations.

MMS Response: The determination of whether or not gas has been unavoidably or avoidably lost and whether or not gas used is royalty-free (whether used offlease or onlease) are operational matters covered by the appropriate regulations of the Bureau of Land Management (BLM) and MMS for onshore and offshore operations, respectively. The BLM's requirements are governed by the provisions of Notice of Lessees and Operators No. 4A. The MMS's requirements are governed by the provisions of OCS Order No. 11. Therefore, although these comments raised many substantive issues, they are not properly addressed in this rulemaking. The MMS does not believe that prior approval for royalty-free use of gas is warranted because most leases, by their specific terms, allow royalty-free use of gas and it is a matter which will be reviewed during audits to prevent abuse.

Proposed § 202.150(b)(2), which addressed royalty-free use of gas for leases committed to unit or communitization agreements, has been expanded in the final rules to also cover production facilities handling production from more than one lease with the approval of the appropriate agency. Although MMS is satisfied that this issue is an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement and BLM's and MMS's regulations, the number of comments received regarding this issue led MMS to believe that reiterating these operational requirements was advisable. This regulation simply provides that a disproportionate share of the fuel consumed at a production facility serving multiple leases may not be allocated to an individual lease without incurring a royalty obligation on a portion of the fuel.

One industry commenter was strongly in agreement with § 202.150(b)(3) of the proposed rules, which recognizes the provisions of Indian leases that are inconsistent with the regulations.

One Indian commenter stated that this paragraph may not act to the benefit of Indian lessees unless MMS makes a specific requirement by instruction, manual releases, or notices to lessees with respect to the specific valuation guidelines to be applied.

MMS Response: The provisions of proposed § 202.150(b)(3) were adopted in the final rules § 202.150(b)(3). In most instances, the valuation regulations will apply equally to both Federal and Indian leases. This section covers any leases which may be inconsistent with the regulations. The final regulations recognize the primacy of statutes, treaties, and oil and gas leases and provide a means for dealing with special valuation requirements for both Indian and Federal leases.

Section 202.150(c)

Section 202.150(c) was proposed as § 206.150(d). It provides that if the BLM (for onshore leases) or MMS (for offshore leases) determines that gas was avoidably lost or wasted, then the value of that gas will be determined in accordance with Part 206. This section also applies to gas drained from onshore leases for which BLM determines that compensatory royalty is due.

One industry commenter stated that the term "avoidable" indicates that such

losses could have been anticipated and eliminated and that serious charges like these should be documented and proven, not merely assumed after the loss has been reported. Therefore, the commenter takes exception to this regulation.

MMS Response: Avoidably lost determinations are handled by personnel responsible for lease management operations, BLM onshore and MMS offshore, and are not a valuation issue. Any operator or lessee that BLM or MMS notifies of an avoidable loss determination has the right to appeal the determination if it is believed to be unjust or unfair.

One Indian commenter stated that payment should be due for the entire value, and not just the royalty portion of gas that is determined to have been avoidably lost or wasted from Indian leases.

One industry commenter stated that it should be made clear in this provision that the amount due for avoidably lost gas should be a royalty value and not the total value (100 percent).

MMS Response: The MMS policy for offshore leases is to assess only royalty for gas determined to have been avoidably lost. This also is BLM's policy for onshore leases for gas avoidably lost on and after October 22, 1984. This date is the effective date of BLM's revised regulations at 43 CFR 3162.7-1(d) (49 FR 37356, September 21, 1984), which included the provision for royalty on avoidably lost gas in accordance with section 308 of FOGRMA, 30 U.S.C. 1756. The MMS and the BLM believe that collection of royalty provides an effective deterrent to wasting gas.

Section 202.150(d)

Section 202.150(d) was proposed as § 206.150(e) and requires royalties to be paid on insurance compensation for unavoidably lost gas.

Several industry commenters stated that to require a lessee to pay royalties on any compensation received "through insurance coverage or other arrangements for gas unavoidably lost is unfair." They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

The MMS removed the insurance compensation section from the first draft final rule. Many Indian and State commenters thought this change was unfair, stating that if the lessee was compensated for the production, the lessor should then receive its royalty share.

MMS Response: The MMS has reinstated this provision in the final rules. However, royalties are due only if the lessee receives insurance compensation from a third person. No royalty is due where the lessee self insures.

Section 202.150(e)

Several industry commenters opposed § 202.150(e), which was proposed as § 202.150(c). They questioned the authority to require other non-Federal/Indian lessees to pay royalties on leases on which they are not the lessee. According to the commenters, this could present gas balancing problems where production taken by a lessee falls below that lessee's production entitlement. These commenters suggested that proposed § 202.150(c) fails to recognize the marketing aspects of production.

MMS Response: Section 202.150(e) of the final rules states that all production attributable to a Federal or Indian lease under the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Most important, however, § 202.150(e) requires that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. As an example, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, it will be sold or otherwise disposed of by one of the other unit participants. If one of the unit participants other than the Federal lessee transports unprocessed gas to a sales point off the unit area under an arm's-length transportation agreement and then sells the gas under an arm's-length sales contract, the value, for royalty purposes, will be that participant's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what participant must report and pay the royalties; it only addresses the issue of valuation.

Through these rules, MMS does not require non-Federal and non-Indian lessees to conform to these regulations for valuing production. The MMS merely has required that the lessee must determine its royalty liability in accordance with the other interest owners' contracts or proceeds as long as those royalties comply with these value regulations. Any gas balancing problem that may exist because of interest owners taking more than their entitlement is a matter to be settled by the agreement members.

Two industry commenters also stated that the foreseeable results of this paragraph include: "* * * (1) chronic late payments of royalties; (2) inconsistent AFS and PAAS reporting; (3) difficulty in determining proper royalty values where the overproduced working interest owners dispose of production pursuant to non-arm's-length transactions; and (4) excessive accounting and administrative costs for MMS and all working interest owners."

MMS Response: The MMS believes that lessees will be able to comply with the requirements of the regulations.

Some industry commenters recommended that paying and reporting royalties be accomplished solely on the basis of sales. According to these comments, because royalties will have been paid on total sales from the leases, there should be no decrease in royalty payments due over the life of the lease through the use of the sales approach.

MMS Response: Paying and reporting royalty solely on the basis of sales would not conform to the requirements of the federally approved agreement or the terms of the lease. Therefore, it is not an acceptable procedure.

Section 202.151 Royalty on processed gas.

Section 202.151(a)

Two industry commenters recommended deleting the word "reasonable" before the words "actual costs" in paragraph (a) because the lessee should be able to deduct actual costs from the processed gas value.

MMS Response: The MMS's policy is to allow "reasonable" actual costs incurred by the lessee for processing lease production. The MMS does not believe that it should share in unreasonable costs and has not adopted this suggestion.

Section 202.151(b)

Several industry commenters stated that an allowance for boosting residue gas should be allowed under paragraph (b) for operation of the processing plant. The rationale was that costs associated with this process are incurred as a result of processing and should not be regarded as costs necessary to place the gas in marketable condition.

MMS Response: The regulations generally maintain the MMS's policy that the lessee is required to condition the production for market. The cost for boosting residue gas is considered as a

cost necessary to place the gas in marketable condition, and will not be an allowable deduction.

Three industry commenters recommended deleting the word "reasonable" before the words "* * * amount of residue gas * * *" and allow actual amounts of residue gas royalty free. Indian commenters were concerned that the regulation should specify that residue gas could not be disproportionately charged to their leases royalty free.

MMS Response: Historically, MMS's policy has been to allow a reasonable amount of residue gas to be royalty free for the operation of a processing plant. In most instances the actual amounts of residue gas used are considered to be reasonable. However, the final rule specifies that only a lease's proportionate share of the residue gas necessary for the operation of the processing plant may be allowed royalty free. Although adopted in response to the concerns of Indian commenters, this provision is equally applicable to all Federal and Indian leases.

Section 202.151(c)

Two industry commenters strongly endorsed the language set forth in paragraph (c).

One Indian commenter stated that "* * * the Secretary should not retain unilateral authority to authorize the royalty-free reinjection of residue gas or gas plant products from Indian production into unit areas or communitized areas." The recommendation was that the volume of royalty-free residue gas or gas plant products which can be reinjected into a unit area should be limited to the ratio of lease production to total unit production multiplied by the volume of unit production reinjected.

One industry commenter requested clarification that the use of the word "reinjection" includes original injection. In addition, the commenter recommended deletion of the qualification "* * * when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval, * * * " because the recovery must be paid for entirely by the lessee.

MMS Response: The BLM or MMS for onshore or offshore operations, respectively, has the authority to approve the plan of development or operations. The issue regarding reinjection of residue gas or gas plant products is a matter which is addressed by the appropriate operational regulations of BLM and MMS.

The MMS received a comment regarding the requirement for dual accounting in § 206.155. That commenter stated that dual accounting should be required in all cases where gas is processed from onshore Federal and Indian leases, because that is the only way to ensure that royalty is paid on that portion of the gas stream leaving the lease which becomes a liquid during the transmission of the gas to the plant. These liquids are commonly referred to as drip condensate. The commenter pointed out that in many instances the company transporting the gas retains these liquids and the lessee makes no royalty payment for this portion of the production removed from the Federal or Indian lease.

MMS Response: As the commenter properly pointed out, royalty is due on all gas production removed from the lease, including any gas which becomes a liquid during transmission to a gas plant. When gas is sold at the lease and the lessee does not retain or exercise the right to process the gas, the total gas production removed from the lease is properly accounted for at that point. Thus, the issue of royalty on drip condensate is not involved in these instances.

When gas is processed by the lessee, any portion of the gas removed from the lease which becomes a liquid during transmission to a gas plant must be accounted for to properly define the value of the total gas production removed from the lease upon which royalty is due. Although MMS is not adopting the recommendation to require dual accounting in all cases where gas is processed, MMS is modifying the final rules in § 202.151 and § 206.153 to specify this requirement. Therefore, it is being made clear that the value of gas which is processed by a lessee must include the combined values of the residue gas, all gas plant products *and* any condensate recovered downstream of the point of royalty settlement without resorting to processing.

Section 202.152 Standards for reporting and paying royalties on gas.

Section 202.152(a)

One industry commenter recommended that the phrase "if the Btu value is required pursuant to the lessee's contract" be added to the end of the last sentence of paragraph (a)(2). This commenter stated that Btu measurement is an expensive process and should not be required periodically unless necessary.

One Federal agency commenter stated that the frequency of Btu measurement be required quarterly, if not monthly, if not covered by the lessee's contract. This commenter stated that there are many situations which may require more frequent monitoring of the Btu heating value to assure proper assessment of gas royalties.

MMS Response: The Btu measurement is necessary in determining the proper value of the gas for royalty purposes. In addition, the BLM onshore and MMS OCS operations regulations require periodic Btu measurements.

Section 202.152(b)

One industry and one Federal agency commenter suggested that the words "where applicable" be added at the end of paragraph (b)(2). They stated that when the production is composed of carbon dioxide, nitrogen, or helium there will be no applicable Btu value.

MMS Response: This regulation has been modified in the final rule to read as follows: "Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any *other gas marketed as a separate* product shall be reported by using the same standards specified in paragraph (a)." The concern expressed regarding Btu values for nonhydrocarbon gases is resolved by the inclusion of the words "where applicable" in the final rule for paragraph (a).

Regarding paragraph (b)(4), one Indian commenter stated that if sulfur is sold in a unit other than a long ton, the lessee should be allowed to report it to MMS and to Indian lessors in that unit.

MMS Response: The unit for reporting sulfur volumes must be standardized for reporting purposes. The most common unit used by industry for reporting sulfur is the long ton. A simple arithmetic formula can be used to convert a unique sales unit to long tons.

Section 206.150 Purpose and scope.

Section 206.150(a)

Several commenters suggested that Indian and Federal lands are dissimilar and deserve separate treatment when valuation and other gas production matters are under consideration. They recommend that separate regulations be promulgated for Indian leases.

MMS Response: The MMS believes that because these regulations provide for a reasonable and appropriate value for royalty purposes, completely separate rules for Federal and Indian leases generally are unnecessary. The regulations in § 206.150(b) recognize the primacy of terms of statutes, treaties, and oil and gas leases which provide special valuation requirements for both Federal and Indian leases. In addition, certain additional provisions applicable only to Indian leases have been included in these regulations.

The MMS has added a general statement that the purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws and other applicable laws and lease terms.

Section 206.150(b)

One industry commenter suggested the addition of the phrase "in the event that any term of an approved existing unit or communitization agreement is inconsistent with the final rule, then such agreement will govern to the extent of the inconsistency."

MMS Response: Section 18 of the standard Federal form of a unit agreement states: "The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof * * *." Therefore, the offered language is unnecessary owing to this existing unit agreement provision.

One Indian commenter suggested the addition of the phrase "provisions of Title 25 of the Code of Federal Regulations will supersede the provisions of this part, to the extent of any inconsistency."

MMS Response: The valuation regulations which were in Title 25 of the Code of Federal Regulations are identical to the provisions of many Indian leases. Therefore, these final regulations would cover any inconsistencies with lease terms if there were any. Moreover, BIA has amended the valuation regulations in 25 CFR simply to refer to the MMS valuation regulations. See 52 FR 31916, Aug. 24, 1987.

Indian commenters recommended that where provisions of any Indian lease, or any statute or treaty affecting Indian leases, as stated or as interpreted by the courts, are inconsistent with the regulations, then the lease, statute or treaty, or court interpretation would govern to the extent of the inconsistency.

MMS Response: This suggestion was not adopted because it was not considered necessary. If the regulations are inconsistent with the requirements of any court decision, the court decision would take precedence.

One commenter suggested that MMS include in this section reference to settlement agreements resulting from administrative or judicial litigation. It was pointed out that some settlement agreement provisions may vary from the regulations.

MMS Response: The MMS has made the suggested change in the final rules because the terms of a settlement of administrative or judicial litigation will govern.

Section 206.150(c)

One industry commenter requested that consideration be given to the establishment of a "statute of limitations" for MMS audit and adjustment purposes. This commenter suggested that a 6-year period be adopted which would commence with the filing of the lessee's royalty report. It was also suggested that a provision be included for the lessee and MMS to mutually agree to waive the limitation for specific incidents and items under appeal or before the courts, but it should never apply in cases of fraud. This would partially relieve both the lessee and MMS of records archival responsibility and the associated costs, which are significant. Also, the limitation goes well beyond the cost-effective period for conducting normal compliance and followup audits. The suggested statute of limitations could be similar in concept and language as that used by the Internal Revenue Service.

MMS Response: The MMS performs all audits in accordance with 30 CFR 217.50. Any limitation such as that suggested would properly be included in a rulemaking to amend that section of the regulations. Therefore, it is beyond the scope of this rulemaking. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases. The MMS will address the issue of audit closure elsewhere.

Section 206.150(d)

The MMS received many comments from Indians that this section should specifically reference the Secretary's trust responsibilities to the Indians.

MMS Response: The MMS has incorporated the suggested change.

Section 206.150(e)

The MMS received a comment from an Alaska Native Corporation stating that MMS should not make the new regulations applicable to the proportionate share of production which corresponds to an Alaska Native Corporation's proportionate share of leases acquired under section 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1613(g). Under section 14(g), a native corporation can acquire all or part of the lease. The commenter's point was that at the time a proportionate interest in a lease is acquired, the native corporation had an expectation of what royalties it would receive, and it would be inequitable for MMS to modify that expectation for leases or portions of leases which MMS does not even own.

MMS Response: The MMS agrees with the comment. Therefore, regulations, guidelines, and Notices to Lessees in effect on the date that an Alaska Native Corporation acquired any proportionate interest in a lease will continue to apply to that interest.

Section 206.151 Definitions.

"Allowance"—One industry commenter suggested that the proposed definition be modified as follows: "Processing allowance means an allowance for processing gas; i.e., an authorized or an MMS-accepted or-approved deduction for the costs of processing gas determined pursuant to §§ 206.158 and 206.159." The same commenter stated further that "Transportation allowance means an allowance for moving unprocessed gas, residue gas, or gas plant production to a point of sale or point of delivery remote from the lease, unit area, communitized area, or processing plant; i.e., an authorized or an MMS-accepted or-approved deduction for transportation costs, determined pursuant to §§ 206.156 and 206.157." This commenter recommended deleting the phrase "for the reasonable, actual costs incurred by the lessee." The method of determining the allowance should be addressed in the regulation setting forth the calculation method, not in the definition of allowance. If MMS adopts comparable arm's-length transportation and processing costs as a benchmark for non-arm's-length contracts, the above cited phrase could be incorrect in certain instances."

A few industry and one Indian commenter stated that certain terms incorporated in the definition are subjective in nature. One industry commenter stated: "The New Rules do not draw a clear, objective line between costs that may be deducted and costs that may not be deducted. What is 'remote'? What is 'field gathering'?" Two industry commenters want the word "reasonable" deleted in the definition of "processing allowance and transportation allowance." They believe that the "Lessee should be entitled to deduct actual cost of processing and transportation. 'Reasonable' implies that the deduction may be something less than actual." One Indian commenter stated: "* * * the use of the terms

accepted and approved call into question important issues regarding the relationship of the acceptance or approval with later audit. We assume that acceptance would not preclude later audit review and disallowance or modification when justified." One industry commenter suggested deleting the words "remote from" and replacing them with "off." The commenter "believes what is really intended by the phrase 'remote from' is to cover transportation to sales and delivery points off the lease."

Finally, one Indian commenter, referring to "allowance," pointed out that: "The definition should clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary.*"

MMS Response: The final rule includes some modifications to the proposed language. It should be noted that processing and transportation allowances are "accepted" subject to review and/or audit. The MMS also has deleted the phrase "remote from the lease" and replaced it with the phrase "off the lease" for clarification that any transportation off the lease, except gathering (see definition below), is eligible for an allowance.

"Area"—One industry commenter stated that "'Area' should be more precisely defined so that there are reasonable limits to how large an 'area' is. In addition, for the sake of clarification, the words 'or producing unit' should be inserted after 'oil and/or gas field' * * *."

MMS Response: For royalty computation purposes, the definition of "area" must remain flexible so that it may be applied to diverse situations. The size of an "area" may vary with each specific royalty valuation determination for gas.

"Arm's-length Contract"—The proposed definition of "arm's-length contract" was addressed by a large number of State, Indian, and industry commenters.

Many commenters stated that the proposed definition of arm's-length contract was so restrictive that many perfectly valid arm's-length transactions may fail to qualify, thus potentially rendering this key element of the benchmark system meaningless. These commenters suggested that MMS should adopt a definition of "affiliated person" based on control versus mere ownership of stock. They stated that in order to eliminate this problem, the underlying language should be deleted in favor of language already adopted by BLM in its regulations implementing section 2(a)(2)(A) of the Minerals Lands Leasing Act of 1920 (MLLA). The rule, 43 CFR 3400.0–5(rr)(3), added by 51 FR 43910, 43922 (1986), specifies that:

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

One industry commenter further recommended that "* * * MMS also adopt a 5% ownership threshold, below which there is an absolute presumption of noncontrol which is not subject to rebuttal. The 5% threshold is taken from the Investment Companies Act [* * *] which establishes that there is no effective affiliation between parties when direct or indirect ownership of voting stock is below 5%."

One industry commenter stated: "Additionally, for those companies in which there is a definite controlling interest, a transaction should still be treated as arm's-length if the controlling company is regulated by a regulatory agency who approves rates or tariffs charged to third parties."

Many industry commenters recommended changing MMS's reference from "persons" to "parties." One of these commenters stated that "Involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to 'joint venture' in the definition of 'person,' which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas."

One industry commenter was concerned that: "The proposed language does not clarify at what time affiliation is to be determined. Is it when the contract is originally executed or some subsequent time during the term of the contract? In the current climate of mergers and acquisitions, affiliation may change." Another industry commenter stated that, although the definition of "arm's-length contract" is well written, any additional language elaborating on the state of being affiliated should be deleted because it would allow auditors to reject too many arm's-length contracts.

One State commenter stated that "The definition of 'arm's-length contract' is clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties. The assumption behind accepting arm's-length contract prices is that those prices will reflect market value. The definition proposed by MMS ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price gas below its value, especially if the benefit of the reduced royalty burden can be shared by means of the gas sales contract." One Indian commenter questioned "* * * whether there are any truly arm's-length relationships in today's market which would make an arm's-length valuation method valid. We are particularly concerned that the arm's-length label essentially forecloses any scrutiny by MMS of the value reported by the lessee." One State/Indian association stated that nonaffiliation does not guarantee arm's-length: "For example, arrangements between families (via blood, kinship, heir, or marriage) offer similar conditions for influencing proceeds subject to royalty."

Two State commenters, one State/industry association, one Indian, and one Indian trade group are of the opinion, as expressed by one commenter, that: "MMS's desire for an 'almost purely objective' test provides a totally inadequate justification for giving away the power to prevent manipulation of the public's royalties." These commenters conclude that: "The definition as proposed is not workable even though it is objective." They suggest that MMS's definition in the draft regulations presented to the RMAC would allow more legally accurate results:

> *Arm's-length contract* means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interest not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

Some Indian and State commenters agreed that, as one commenter phrased it: "The adverse economic interest and open market requirements have long

been standard criteria for determining the arm's-length nature of contracts. These criteria have allowed for an accurate line of demarcation between arm's-length and non-arm's-length."

One State commenter supplied the following questions to be asked to test the arm's-length nature of a contract: "(1) Is there an individual who is a board member, officer, partner or employee of one of the contracting parties, and also a board member, officer or employee of the other? (2) What, if any, other commercial relationships exist or are being proposed between the buyer and seller? (3) Is there any family relationship between the buyer and seller? (4) Is there any other special relationship between the parties to the gas sales contract?"

Based on the numerous comments concerning the originally proposed definition, MMS included in the first draft final rule a definition which adopted the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3) quoted above. In response to those commenters who believed that parties to an arm's-length contract must have adverse economic interests, MMS included in the first draft final rule definition a provision which required that, to be arm's-length, a contract must reflect the total consideration actually transferred from the buyer to the seller either directly or indirectly. For example, if the parties to the contract agreed that the price for gas from a Federal or Indian lease would be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS would not treat that contract as arm's-length.

Many of the comments on the first draft final rule again focused on the definition of arm's-length contract. Most of the industry commenters thought that the reference to "reflects the total consideration actually transferred directly or indirectly from the buyer to the seller" did not belong in the definition of arm's-length contract. Rather, they stated that it properly should be dealt with as a "gross proceeds" issue. The States and Indians commented that a reference to adverse economic interests still was necessary. They also thought that there must be a requirement of a free and open market. Finally, the States and Indians thought that MMS should lower the control threshold to 10 percent and that MMS should have more flexibility to rebut presumptions of noncontrol. Many of these commenters also thought that the rules should state that the lessee has the burden of demonstrating that its contract is arm's-length.

MMS Response: The MMS has adopted many of the suggested changes to the definition. The MMS agrees that the "total consideration" issue is properly a gross proceeds matter that does not reflect the affiliation of the parties. Thus, that phrase has been deleted from the arm's-length contract definition and the matter dealt with under the definition of "gross proceeds". The MMS did not adopt the concept of "free and open market" because that concept is highly subjective. However, MMS did include a requirement that the contract be arrived at "in the marketplace" in support of the concept that an arm's-length contract must be between nonaffiliated persons. Also, in furtherance of that concept, MMS included a provision that an arm's-length contract must be between persons with opposing economic interests regarding that contract which means that the parties are acting in their economic self-interest. Thus, although the parties may have common interests elsewhere, their interests must be opposing with respect to the contract in issue. The MMS has not reduced the control threshold to 10 percent, although it should be understood that MMS can rebut presumptions of noncontrol between 0 and 20 percent.

Many commenters thought that MMS's inclusion of joint venture in the definition of "person" improperly narrowed the definition of arm's-length contract. These commenters have misconstrued MMS's intent. The definition of "person" includes joint ventures because there are instances where joint ventures are established as separate entities. In those situations, if a party with a controlling interest in the joint venture buys production from the joint venture entity, that contract is non-arm's-length. However, MMS is aware that it also is common for companies to jointly contribute resources to develop a lease and then share the production proportionately. In a situation where four totally unaffiliated companies share the production, if one of the companies buys all of the production from the other three, those three contracts would be considered arm's-length. The company's purchase from its affiliate, of course, would be non-arm's-length.

The MMS also has included in the arm's-length definition a provision whereby if one person has less than a 20-percent interest in another person which creates a presumption of noncontrol, MMS can rebut that presumption if it demonstrates actual or legal control, including the existence of interlocking directorates. For example, there may be situations where ownership of 5 percent of a very large corporation could give a person sufficient control to direct the activities of that corporation. Where there is evidence of actual control, MMS can rebut the presumption of noncontrol.

Finally, in response to those commenters who believed that the lessee has the burden of demonstrating that its contract is arm's-length, MMS has included such a provision in the valuation sections. See §§ 206.152(b)(1)(i) and 206.153 (b)(1)(i).

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed.

"Audit"—One industry commenter expressed concern over MMS's interpretation of what constitutes an audit: "MMS's use of terms such as 'review,' 'examination,' rather than 'audit,' arbitrarily eliminates the right of lessees to offset overpayments and underpayments discovered during the course of an audit." This commenter believes that an account reconciliation by MMS should be termed an audit.

One Indian commenter did not disagree with the definition but thought that the processed information available to MMS is not adequate to perform thorough audits. "Our view of the definition of audit is academic because the MMS will accept payment reports without review in the future as in the past, unless resources and personnel are provided by the Tribe to accomplish the task."

One industry commenter stated that the review and resolution of exceptions processed by MMS's automated systems constitutes auditing by mail. The industry takes exception to this procedure.

MMS Response: The MMS has simplified the definition of "audit" as follows: "Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases."

"Compression"—One industry commenter suggested deleting the

definition because the term does not require an explanation.

MMS Response: The MMS believes that the definition should be retained because it clarifies a term used in the regulations.

"Field"—One industry commenter suggested adding the underlined language to clarify that this definition is for royalty purposes: "Field means, *for purposes of oil and gas royalty,* a geographic region * * * ."

MMS Response: The additional language proposed by the commenter is unnecessary because the underlying premise of all the definitions contained in § 206.151 is that they are for royalty purposes.

"Gas"—One industry commenter stated that "The term should refer to unprocessed gas. The chemical definition is inappropriate in this context because it fails to distinguish between manufactured and raw gas."

MMS Response: The MMS believes that the definition adequately and correctly defines the term "gas" in language which is accepted by the oil and gas industry.

"Gas Plant Products"—One industry commenter stated that the phrase "excluding residue gas" should be deleted from this paragraph. According to this commenter, "Residue gas is a manufactured product as that term has been used by Federal courts in the royalty context. See *U.S.* v. *General Petroleum; California* v. *Seaton* affirmed *California* v. *Udall* * * * . If gas is processed, or manufactured there is no rational basis for limiting the deduction of manufacturing costs against the value of only gas plant products other than residue."

One industry commenter suggested, "* * * we think the word 'nitrogen' should be excluded from the definition of 'Gas Plant Products' since some natural gas is high in this component, and there is currently a small or nonexistent market for small amounts of nitrogen. Purchasers have traditionally downgraded the price for high nitrogen gas, and if producers have to bear additional royalty as well, they may elect to shut in or plug wells due to poor economics."

MMS Response: The MMS does not agree that the phrase "excluding residue gas" should be deleted from this paragraph. Historically, no processing allowance has been allowed to be applied against the residue gas, and MMS generally has retained this position in the final rule. The MMS has also concluded that the definition should not be modified to exclude nitrogen. The MMS has, however, included in § 206.158(d) a provision for an extraordinary processing allowance for atypical types of gas production operations.

"Gathering"—MMS received numerous comments from industry concerning the phrase "or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively." These commenters stated that the phrase was unclear and that it should be removed from the definition.

MMS Response: The definition has been retained intact. The operational regulations of both BLM and MMS require that a lessee place all production in a marketable condition, if economically feasible, and that a lessee properly measure all production in a manner acceptable to the authorized officials of those agencies. Unless specifically approved otherwise, the requirements of the regulations must be met prior to the production leaving the lease. Therefore, when approval has been granted for the removal of production from a lease, unit, or communitized area for the purposes of treating the production or accumulating production for delivery to a purchaser prior to the requirements of the operational regulations having been met, MMS does not believe that any allowances should be granted for costs incurred by a lessee in these instances.

"Gross Proceeds"—MMS received a large number of comments on this definition.

Three Indian, one State, and one State/Indian association commenter supported the definition and urged MMS to retain the entitlement concept despite pressures to the contrary. A State commenter stated that "MMS has correctly resisted lessee efforts to exclude the royalty owner from sharing in some kinds of consideration, such as severance tax reimbursement and take or pay payments." This commenter recommended clarifying the first sentence by amending it as follows: "Gross proceeds (for royalty purposes) means the total monies and *the value of* other consideration paid *or given* to [an oil] and gas lessee, or monies and *the value of* other considerations to which such lessee is entitled, for the disposition of gas." The commenter stated that "These additions are necessary because when 'consideration' is not in the form of 'monies' it is necessary to determine its value."

Many industry commenters opposed the definition of "gross proceeds" as proposed because they believed it is too expansive and contrary to the provisions of the Mineral Lands Leasing Act and the OCS Lands Act. Instead, they propose the following: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from Federal, Indian Tribal or Indian allotted leases." One commenter stated further that "Such definition is unambiguous, furthering the MMS's desire for certainty in its regulations. Reimbursement for production-related costs and take-or-pay payments are currently being litigated. If it is eventually determined that royalty is owed on such payments such definition will not have to be modified. On the other hand, the proposed definition will have to be amended if industry is successful in its claims that royalty is not due on such amounts." One industry commenter proposed adopting the definition of "gross proceeds" endorsed by a majority of the RMAC Gas Panel. It reads: "* * * all consideration due and payable to the lessee for the sale of gas and processed gas products, less any applicable allowances for transportation, processing and other post production expenses."

Several of the industry commenters disagreed with the entitlement language contained in the originally proposed definition. Their concerns are represented by the following statement from one of the comments: "Proceeds have long been defined and understood to mean the consideration, money or the monetary equivalent of other nonmonetary consideration *actually received by a lessee.* The MMS' expansive definition of proceeds, including monies to which a lessee is *entitled,* makes product valuation uncertain and subjective. This uncertainty and subjectivity arises because: (1) The meaning of entitlement is not clearly understood, nor is it a clearly defined legal term; (2) lessees do not know how either they or MMS will, or should, apply this standard; and (3) the required steps which a lessee must take to secure entitlements to consideration are unknown. It will put MMS into the business of second guessing lessee's business transactions. To minimize this second guessing problem of uncertainty we recommend the concept of entitlement be eliminated from further consideration." One industry commenter was concerned that "a lessee would be required to pay royalties on monies to which it is entitled, not on what is received or on what is settled for as a matter of compromise." In order to add more certainty to the concept of "entitlement," one commenter suggested "a simple statement to the effect that

MMS expects to be indemnified against the negative consequences of a lessee sleeping on its *clear cut uncontested* contract rights should suffice."

Many industry commenters had the opinion, as one commenter phrased it, that "Federal statutes, regulations, and leases do not require lessees to pay royalty on reimbursements received for post-production services." Several commenters believed that "the claim for royalty on production-related cost reimbursements received by a lessee pursuant to the FERC's Order No. 94 series is particularly inappropriate." One commenter stated that "a demand for royalties on Order No. 94 violates the royalty clause of the MLA, the OCSLA, as well as MMS's own regulations implementing these statutes, for at least two reasons. First, these reimbursements do not result from the production of gas but from services performed by the producer subsequent to production. Second, such reimbursements are not consideration for production that is sold or removed and are thus outside the scope of the royalty clause. Consequently, the MMS' proposal to include production-related cost reimbursements in the definition of gross proceeds is simply wrong." Another industry commenter "strongly asserts the producer's right to deduct all post-production costs involved in marketing gas. Further tax reimbursements should be exempt from royalty." Finally, one industry commenter stated that "all post-production costs should be shared by lessor and lessee because such costs enhance the value of the production for the benefit of both lessor and lessee."

Many industry and a few individual commenters responded to the inclusion of take-or-pay payments in the definition of "gross proceeds." The consensus among these commenters is that MMS has no lawful reason or authorization to collect royalties on take-or-pay payments. One commenter stated that "the typical take-or-pay clause in a contract between the lessee and the gas purchaser requires the purchaser to pay for the specified minimum quantity of gas for each contract year. Whenever the gas purchaser takes less than the contract minimum for a particular year, the purchaser is required to make a take-or-pay payment to the lessee. The purpose of take-or-pay payments is to guarantee the lessee a steady cash-flow, regardless of the level of actual production, to meet its operation and maintenance costs. The payments are not for production; indeed, they are made in lieu of taking production. Consequently, to the extent the lessee receives take-or-pay payments there is no gas production or sale because the gas remains in the ground."

Several industry commenters recommended the increased use of "in-kind" royalty clauses to resolve good faith royalty disputes. One industry commenter stated "indeed, the 'in-kind' standard should be considered as the measure of product 'value,' where a producer and the MMS, or a State auditor under a delegation of authority, disagree over whether a contract is 'arm's-length,' or over contract 'entitlements,' the gas should be taken 'in-kind,' by volume at the wellhead. This means that the royalty owner must assume all subsequent costs of marketing the gas."

MMS Response: In the draft final rule, MMS included a definition which was only slightly different than the proposal. In this final rule, MMS has again made a slight modification, discussed below. The MMS retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. The MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the gas, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract. Moreover, as noted earlier, many commenters stated that the "total consideration" concept properly belonged as part of gross proceeds, not in the definition of arm's-length contract. Therefore, MMS has purposefully drafted the gross proceeds definition to be expansive and thus include all types of consideration flowing from the buyer to the seller. Toward that end, MMS has replaced the word "paid" used in the draft final rule with the term "accruing." There may be certain types of considerations which are not actually paid by the buyer to the seller, but from which the seller benefits. The term "accruing" ensures that all such consideration is considered gross proceeds.

Costs of production and post-production costs are lease obligations which the lessee must perform at no cost to the Federal Government or Indian owner. The services listed in the definition are all benefits that a lessee may receive under the terms of the contract and are considered part of the value, for royalty purposes, for the production removed or sold from the lease.

It is MMS's position that take-or-pay payments are part of the gross proceeds accruing to a lessee upon which royalty is due.

The MMS retains the exclusive right to determine when it will accept "in kind" production in fulfillment of a lessee's royalty obligation.

"Lease"—One Indian commenter stated the following: "Inclusion of any contract profit-sharing arrangement, joint venture or other agreement in the term lease as opposed to a more standardized BIA form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain explicit provisions on payment of expenses and division of revenues."

MMS Response: This definition must be broad enough to cover any agreement that may be issued or approved by the United States for either Federal or Indian lands.

"Lease products"—One industry commenter stated: "Lease products definition should be deleted as it eliminates the important and necessary distinction between raw gas and manufactured products. Use of the phrases 'gas' and 'gas plant products' is preferable as it serves to make this distinction."

MMS Response: The MMS believes that this definition is appropriate and correct and does not eliminate any distinction between raw gas and manufactured products. The definition of the terms "gas" and "gas plant products" will be retained in the definitions paragraph.

"Lessee"—Several industry representatives and trade groups commented that the proposed definition of "lessee" is too broad. One commenter stated that "As drafted, it would include any person who pays royalties, notwithstanding the fact that such payors may have no contractual obligation to the lessor to make royalty payments. Thus, under the proposed definition, the voluntary royalty remitter would become subject to all of the royalty valuation obligations imposed on lessees and would consequently,

become directly liable for any infractions of the application reporting and payment regulations, a result which is not sanctioned by existing statutory law. To be consistent with that law, industry suggests that MMS substitute for its definition of "lessee" the one which is contained in section 3(7) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1702(7):

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease."

Most of these commenters favored this definition because "the statutory definition includes persons who have been issued a lease or who have been *assigned* an obligation to make royalty or other payments required by the lease. The gas proposal would wrongfully expand the definition to include any person who has *assumed* an obligation to make such payments."

One industry commenter recommended adding the phrase "for royalty payment purposes" directly after the word "Lessee" for the purpose of clarity. "We do not believe it is the intent of Congress that a lessee be able to divest himself of all lease obligations by someone else merely assuming royalty responsibility."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." It should be specifically noted that the term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM or BIA.

"Like-quality lease products"—Some Indian commenters recommended deleting any reference to legal characteristics from this definition. They felt that by using legal characteristics of gas in defining like-quality gas many elements would be used to differentiate gas in such a manner as to lower gas values. They were concerned that gas sold in intrastate commerce would not be considered as being like-quality to gas sold in interstate commerce. They felt that such distinction would be contrary to court rulings. Further, the Indian commenters felt that gas should be considered only on its chemical and physical characteristics.

MMS Response: The MMS believes that legal characteristics of gas must be considered in determining like-quality production. However, the legal characteristics of gas intended to be considered under this definition are limited to categories under NGPA and the price regulated or deregulated status of the gas. The MMS does not believe that mixing NGPA categories of gas or comparing regulated to deregulated gas is reasonable when defining like-quality gas for royalty purposes. Without such distinction, gas that is price regulated at levels below $1.00 per MMBtu might be used to demonstrate the acceptability of a price for gas that should be compared to gas selling for prices in excess of $2.00 per MMBtu under market-sensitive contract provisions free from Federal price controls. Similar problems could result by mixing price regulated gas with price deregulated gas, even though the gas qualifies under the same provisions of NGPA. For example, between January 1, 1985, and July 1, 1987, all wells qualifying under NGPA section 103 qualified under section 103(c). However, there were two different maximum lawful price ceilings prescribed by this section and a provision that deregulated certain section 103 gas. Regarding the distinction between intrastate and interstate sales, it has not been MMS's practice, nor is it intended to be under these final regulations, to incorporate the market chosen by a lessee in the definition of like-quality gas (unless adopted as a requirement by NGPA in defining categories).

"Marketable Condition"—One industry commenter suggested changing the definition to "Marketable Condition means condition acceptable to the purchaser under its sales contract."

One industry commenter suggested adding the words *"and/or transporter"* after the word "purchaser" in the definition.

One industry commenter stated that phrases such as "sufficiently free from impurities" and "a contract typical for the field or area" are subjective and ambiguous. The commenter stated that "All references to 'marketable condition' should be dropped in the final regulations. Instead, the regulations should reflect the distinction between production and post-production costs and clearly allow the lessee with an arm's-length contract to deduct post-production costs."

One industry commenter stated that "The proposed definition of 'marketable condition' is problematic because it seems to set up a normative standard for the condition of a product, when in fact products may be sold profitably in a variety of conditions. We do not believe the lessee should be required to meet a specific set of processing criteria in all circumstances. The lessee, for its own profit and for that of its lessor, must be able to evaluate potential benefits and costs under each circumstance without being bound by what the lessor may consider 'typical' for the field or area. Furthermore, regarding the term 'typical', what was typical 20 years ago almost certainly is not typical now; yet there is no reference in this definition to the need for contracts to be fairly contemporaneous in order to be comparable. The definition set forth in the report of RMAC's Gas Working Panel is far preferable to the proposed rule."

MMS Response: The MMS believes that the definition is clear, concise, and equitable. The definition is not subject to manipulation, as one commenter stated. Furthermore, the suggestion that a uniform standard be developed for what is "marketable" is unrealistic because the gas marketplace is dynamic. The definition, as written, allows MMS the latitude to apply the concept of "marketable" in a fair and correct manner, now and in future gas markets. Therefore, the MMS has not made any changes to the proposed definition.

The MMS received several comments that sales to marketing affiliates who then resell the gas to third persons should not be treated under the rules as non-arm's-length sales. The MMS has addressed this issue in the valuation rules, discussed below, and is including a definition of marketing affiliate as an affiliate of the lessee whose function is to acquire *only* the lessee's production and to market that production.

"Net-back Method"—One industry commenter recommended deleting the second sentence of the definition because the procedure for performing a net-back calculation cannot be adequately explained in one sentence. Another industry commenter believed that the reference to net-back method needs clarification. A net-back is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the gas at a point remote from the well. Consequently, a net-back procedure can be employed simultaneously with another valuation criterion to arrive at the value at the well."

One industry commenter stated the following about the definition: "It is vague because there is no explanation of what 'working back' means; it is overly broad because the first 'use' of virtually all gas is downstream from the lease. In addition, exclusive reliance on costs, however 'costs' are determined, may well understate the value added to

production by downstream value-enhancement activities."

One State commenter stated that "the definition is internally inconsistent because it declares the 'net-back method' to be a method for valuing 'unprocessed gas' which is first sold downstream of, among other things, 'processing plants.' One of these references must ue deleted to preserve consistency. The concept is vague because no standard is provided for determining what is meant by the phrase 'first alternative point which can be used for value determination.' "

MMS Response: Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point remote from the lease. The MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where gas production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the gas cannot be determined through application of the first three benchmarks in the regulations (see § 206.152(c)), then a net-back method would involve beginning with the sale price of the electricity and deducting the costs of generation and transportation, thus working back to a value at the lease. In the draft final rule, MMS used the phrase "ultimate proceeds" to try and refer to the downstream product. Many commenters thought the term would result in MMS doing a net-back from the furthest downstream product, even to the point of "Stainmaster Carpet" or "model airplanes." This was not MMS's intent. Therefore, the term "ultimate" has been deleted and a reference included to starting the net-back at the first point at which reasonable values for any product may be determined by comparison to other sales of such products. Thus, if there are five different stages of chemical or fiber products between raw gas production and "Stainmaster Carpet," if the value of the second product can be determined through comparisons with sales of other such products in the same market, MMS would begin the net-back from that product, not from the carpet.

"Net Output"—One industry commenter recommends "substituting the phrase 'actually extracts' for 'produces'. Net output of a plant is that which is *actually extracted,* not theoretically extractable."

MMS Response: The MMS disagrees with the commenter's recommended addition. The phrase "actually extracts" could be interpreted as meaning something different than "is produced."

"Person"—One industry commenter recommended replacing the word "firm" with "company" in the interest of clarity.

Several industry commenters expressed the opinion that if the definition is not altered "then inclusion of joint venture in the definition of person could be extended to oil and gas joint venture operations and further narrow the definition of an arm's-length transaction by clouding the issues of control and affiliation. The sale of hydrocarbons produced through joint venture operations should not be presumed to be other than arm's-length because the individual parties and not the 'joint venture' are responsible for making their own sales of their share of the production." One industry commenter stated that the solution to the problem is to delete the term "joint venture" from the definition. Another industry commenter proposed the following definition: "Person means any individual, firm, corporation, association, partnership, consortium, or joint venture. For purposes of this definition, association, partnership, consortium or joint venture shall not include any relationship or arrangement resulting from persons entering into any joint operating agreement, production sharing agreement, farm-out or farm-in agreement, or any similar agreement or contracts generally found in the oil and gas industry for the cooperative exploration of mineral resources."

MMS Response: The MMS's modification to the definition of arm's-length contract to include the "control" language should satisfy the problems identified in the comments. Therefore, MMS will retain the proposed definition of "person" in the final rule.

"Posted Price"—One industry commenter stated that the word "posted" is an outdated term which should be deleted and that the following *underlined* language should be added to the definition. "Posted price means the price in the field, net of all deductions, as specified in a publicly available * * * price bulletin *or price notices available as part of normal business operations to an operator desiring to do business with specific purchasers,* that a buyer is willing to pay for quantities of unprocessed gas, residue gas, or gas plant products of marketable condition * * *." The commenter also stated that, "if gas price bulletins become generally circulated, it may be that some buyers may not publish a price bulletin as that term is normally used in the industry, but will provide and make available price quotations or notices to any operator (seller) desiring to do business with the buyer."

MMS Response: The MMS has revised the definition in the final rule. For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all deductions" has been modified to read "net of all adjustments." As used in this definition, the term "adjustments" refers to deductions from the price of gas or gas plant products for quality adjustments. Adjustments for location also may be taken into account where appropriate.

"Processing"—Two industry commenters recommended "that a clarifying statement be included to recognize that a plant may be located on the lessee's Federal/Indian lease. If a gas plant is located on a lease, then any of the 'field processes', as set out in the definition, may well be an integral part of the plant process and consequently must be considered elements of processing." One industry commenter suggested that the following sentence be inserted between the proposed second and third sentences: "However, these processes will be considered as processing if they are included as an inherent part of the process to separate the produced gas into gas plant products and residue gas." Two industry commenters recommended "The addition of the word 'fractionation' at the end of the first sentence. Fractionation is a plant process and an allowance should be granted as is currently allowed by MMS."

One Federal agency commenter stated that some confusion may arise when comparing proposed § 206.151(bb) to proposed § 206.158(d). "Once the gas reaches the gas plant it would be arguable that any process associated with treating the gas, such as dehydration or mechanical separation, is generating a gas plant product that would be eligible for a processing cost deduction."

One industry commenter suggested changing the definition of "processing" to: " *'Manufacturing:'* The transformation of a raw gas stream into one or more saleable products by processes other than dehydration, standard field conditioning and separation techniques. Manufacturing includes gas processing, sweetening, purification, desulfurization, gas separation, adsorption, absorption, liquefaction and other extraction techniques. Furthermore, gas processing should be defined as: *Gas Processing:*

The manufacturing technique whereby wet gas is treated to remove natural gas liquids such that the natural gas liquids and dry residue gas are separately marketable." This commenter thinks that "manufacturing also includes the physical operation attendant to the specific manufacturing process such as the dehydration and compression steps which occur within a gas plant. The MMS has instead attempted to limit its attention to 'gas processing' and thus provides an allowance only to such operations. The position of the MMS is based upon a clear misapplication of the *Udall* case, namely, that all operations for placing gas in marketable condition, *including manufacturing operations,* are not deductible. Compounding its error, the MMS ignores the *General Petroleum* holding, not affected by *Udall,* that residue gas is a manufactured product, and so proposes that no manufacturing cost be deducted against the residue gas."

One State commenter stated that the definition of "processing" is very vague. According to this commenter, the distinction between "field processing" and other "processing" is not clearly drawn. The commenter asserted that "The ambiguity of the definition of 'processing' would not be so troubling except for the fact that it seems to control the meaning of the term 'unprocessed gas,' which is not defined in the proposed regulations despite its critical importance. One would think that regulations aimed at providing certainty would present clear guidelines for identifying the 'processing' costs in which the royalty owner must share."

MMS Response: The MMS has considered the comments carefully but disagrees that the proposed definition is confusing and vague. Therefore, it will be retained unchanged in the final rule.

"Residue Gas"—One industry commenter suggested that "Residue gas may also include ethane." Another industry commenter recommends deleting this definition but states: "Nevertheless, if this definition is maintained residue gas should be restricted to residue gas resulting from processing sweet gas containing hydrocarbons."

MMS Response: The MMS has not adopted the suggestions made by the commenters and the definition remains unchanged. The definition recognizes that residue gas may include ethane.

"Spot Sales"—One industry commenter suggested deleting all language in the proposed definition that follows the word "duration." According to this commenter, "The additional language is not necessary to define a spot sales agreement as it defines what is *not* required, versus what *is* required."

One industry commenter suggested deleting the clause "* * * which does not require a cancellation notice to terminate * * *." "Many spot sales agreements require ten (10), thirty (30), or sixty (60) days notices of cancellation * * *. The MMS purpose of including only those contracts which do not imply an intent to continue in subsequent periods is adequately served by the balance of the definition."

Three industry/trade group commenters recommended that this paragraph should be retitled as " 'spot/direct sales agreements' and a definition for direct sales be added as follows: A direct sale (which generally does not contain a reserve dedication) is a similar agreement but is usually made with an end user or local distribution company *and can be a short or long term contract."*

One industry commenter recommended adding the following sentence to the definition: "A spot or direct sale which meets all of the criteria of an arm's-length contract as defined in § 206.151(d) of these regulations shall be treated as an arm's-length contract according to these regulations." The commenter believes that the proposed definition must clearly state that a spot sales agreement will be treated as arm's-length if it meets all the requirements of an arm's-length agreement.

MMS Response: In the final rule, MMS has inserted the word "normally" immediately preceding the phrase "require a cancellation notice to terminate." The MMS also agrees that there are spot sales which constitute arm's-length contracts. However, to be considered as a comparable arm's-length contract in the valuation of gas which is not sold pursuant to an arm's-length contract, these contracts also must meet other standards. See, for example, § 206.152(c)(1).

"Take-or-pay payment"—Several industry comments were received on this definition and all recommended its deletion. The comments are reflected by the following statement of one of the commenters: "While the definition proposed is technically correct, it should be deleted from the proposed rule because, as stated in the discussion of § 206.151(m) above, take-or-pay payments are not consideration for the sale of production."

MMS Response: The MMS is retaining the definition as proposed, with minor modification. The MMS already addressed above the issue of whether take-or-pay payments should be included in gross proceeds.

"Warranty Contract"—One industry commenter stated that "the exclusion of warranty contracts from the valuation of gross proceeds under an arm's-length contract is intended to exclude those low-value warranty contracts that were entered into prior to the mid 1970's. However, the proposed definition is so broad that it will encompass future negotiated selling arrangements." To clearly express the MMS's intent, the commenter "proposes that the definition be restricted to those contracts entered into before a specific date."

MMS Response: The MMS has modified the definition to refer only to long-term contracts entered into prior to 1970. This also includes contracts entered into prior to 1970 that may have been amended either before or after 1970.

Proposed New Definitions

Commenters have proposed adding the following definitions to the list of existing definitions: natural gas liquids; post-production costs; production; production costs; royalty; and unavoidably lost gas.

MMS Response: The MMS has decided not to include any of the suggested additional definitions. The terms either have a recognized meaning (such as "royalty") or are not used in the regulations (such as "postproduction costs").

Section 206.152 Valuation standards—unprocessed gas.

Section 206.152(a)

Paragraph (a)(1) provides that the provisions of § 206.152 apply only to gas that is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. The section expressly does not apply to contracts where the lessee reserves the right to process the gas or to percent of proceeds contracts. Several industry commenters stated that the proposal to exclude percent of proceeds contracts from this section is unreasonable and unfair to the lessee. They stated that the percentage of proceeds mechanism is a means of arriving at the wellhead value and is not a sale of processed gas. All industry commenters recommended classifying percent of proceeds contracts under unprocessed gas.

MMS Response: The MMS still believes that the percentage of proceeds contracts should be treated as processed gas as proposed. However, because the final rule includes provisions for an exception from processing allowance limitations (see § 206.158(c)(3)), many of

the commenters' concerns should be resolved.

An Indian commenter stated that this section is inconsistent with the ruling in *Jicarilla Apache Tribe* v. *Supron,* which held that under the terms of the Indian leases in dispute, wet gas had to be valued as the higher of the value at the lease or as the value of all products at the tailgate of the plant, less transportation and processing costs.

MMS Response: The MMS's regulations recognize the primacy of statutes, treaties, and oil and gas leases, thus providing a means for determining special valuation requirements not only for Indian leases, but also for Federal leases. Many Indian leases have provisions that require dual accounting for processed Indian gas production.

Section 206.152(a)(2)

One Indian commenter stated that this proposed rule authorizes alterations in dealings between the Indian lessor and the industry lessee. The commenter further stated that this provision will result in royalties which are adjusted for transportation costs not contemplated by either party to the lease. The commenter recommended that all references to transportation allowances be deleted and that value be defined, for royalty purposes, to be the fair market value of the gas at the lease in marketable condition.

One industry commenter objected to the concept of determining royalty on the value of gas and the associated products after completion of the manufacturing or processing phase. The commenter recommended that royalty be due only on the market value of the product as it is produced at the wellhead.

Industry commenters recommended that the phrase "less applicable transportation" should be expanded to include other cost allowances such as production costs.

MMS Response: The MMS has modified the final rule to refer to "applicable allowances" because the final rule includes provisions for limited extraordinary cost allowances in addition to transportation allowances. In response to the comments, transportation allowances generally are appropriate for most Indian leases. The regulation refers to "applicable" allowances and does not imply that any and all transportation costs can be deducted. If transportation allowances are not appropriate, the word "applicable" restricts application only to those leases where they can be applied.

The MMS is including in the final rule a new paragraph (a)(3) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the royalty value, for royalty purposes, will be the higher of those two values. The draft final rule included a provision that if MMS determines that the major portion results in an unreasonably high value, then it will not be used for royalty purposes. Many Indian commenters thought that, for their leases which include a specific reference to the major portion, that value should establish a minimum value, and that a major portion value in most cases will be reasonable because at least half the gas is sold at or above that price. The MMS agrees and has made the change to the final rule.

The MMS is also including in paragraph (a)(3) a description of how the major portion is computed. It will be determined using like quality gas, which includes legal characteristics (generally, the specific NGPA category). Only gas sales under arm's-length contracts will be used because non-arm's-length contracts may not reflect market value. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one mcf of the gas (starting from the bottom up) is sold.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.152(b)

Several industry commenters stated that they supported the concept of relying on gross proceeds in an arm's-length transaction as the principal determinant of value. Some industry commenters also endorsed the overall approach to valuation determination procedures and eliminating the requirement that a lessee obtain preapproval.

One Indian commenter recommended that a definition of gas value, for royalty purposes, be based on the highest price paid or offered for similar gas in the same field or area, and requested MMS to adopt the following approach:

Section 206.102 (sic) Valuation Standards.

(a) Remains the same.

(b) The value of gas which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue, to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area. If such proceeds fall more than 10 percent below such prices, the value of gas in that case shall be 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area.

A State commenter stated that the proposed regulations would allow substantial manipulation and undervaluation of the royalty amount because it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation. They recommended at a minimum, only prices under "genuine" arm's-length contracts should be acceptable for royalty purposes and urged MMS at least to impose a floor value, such as 80 percent of the value of production as determined under the "value" criteria applicable to gas not sold under arm's-length contracts.

One Indian commenter recommended the inclusion of provisions specifically reserving to MMS the right to review and audit "arm's-length" contracts and that the proceeds under all contracts should be subject to price checks—market value analysis—before being accepted as value. Another Indian commenter requested that all arm's-length contracts be filed with MMS and that MMS require that agreements for the sale or disposition of gas within different branches of the same company be in writing and on file.

One Indian commenter stated that "if MMS is to properly undertake its responsibilities, a predetermination of value on which royalty is to be based should be made *before* production value is reported." In addition, it was recommended that the Secretary should determine whether each contract is arm's-length or non-arm's-length instead of allowing the lessee to make this determination. Also, it was suggested that the Secretary should have all benchmarks available to him and MMS should have the flexibility to set benchmark minimum prices established by the highest price paid or offered for a major portion of gas produced from the field or area.

MMS Response: The suggestions to predetermine the value on which royalty is to be based were not adopted because of the increase in administrative burden

which would be very costly for MMS (and, in some instances, to industry). An internal sales agreement cannot be considered to be arm's-length.

In response to a large number of comments from the States, Indians, and industry, MMS has modified the regulations which govern the valuation of gas production sold pursuant to arm's-length contracts. For almost all such sales, the value for royalty purposes will continue to be the gross proceeds accruing to the lessee. Under MMS's existing regulations, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable, though not conclusively, as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. The MMS typically accepts this value because it is well grounded in the realities of the market place where, in most cases, the ⅞ths or ⅝ths owner will be striving to obtain the highest attainable price for the gas production for the benefit of itself; the royalty owner benefits from this incentive.

It also adds more certainty to the valuation process for payors and provides them with a clear and logical value on which to base royalties. Under the final regulations, in most instances the lessee will not have to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee. This is particularly a concern for lessees who have long-term arm's-length contracts where sales prices under newer contracts may be higher. If MMS were to establish royalty value based on prices under those newer contracts; *i.e.*, prices which the lessee cannot obtain under its contract, the resulting royalty obligation could, in some instances, consume the lessee's entire proceeds.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States which assist MMS in the audit and enforcement effort. The gross proceeds standard will give auditors an objective basis for measuring lessee compliance. It will reduce audit workload and reduce the administrative appeal burden which results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

The MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the buyer to the seller. By way of illustration, in return for Seller's reduced price for gas production from a Federal lease, Buyer may agree to reduce the price of oil it sells to the Seller from a non-Federal lease. This agreement is not reflected in the gas sales contract. In the event that MMS becomes aware of consideration that exists outside the four corners of the contract, even if the parties are not affiliated and the contract is "arm's-length," MMS may require in paragraph (b)(1)(ii) that the gas production be valued in accordance with paragraph (c), the standards used to value gas disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts.

The MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties. Although many commenters disagreed with the requirement, the final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the gas. The commenters believed that values already were subject to audit and that was a sufficient safeguard. The MMS is retaining this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists when the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of a patently imprudent contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(1)(iii), if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS may require that the gas production be valued pursuant to paragraph (c)(2) or (c)(3). Thus, MMS first must determine that a price is unreasonable; for example, by looking at comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market its production for the mutual benefit of itself and the lessor.

The MMS believes that new paragraph 206.152(b)(1) establishes a more definable standard than paragraph (b)(1) of the draft final rule at 52 FR 30813 ("whether there may be factors which would cause the contract not to be arm's-length"). Although MMS retains the discretion under this section not to accept an arm's-length contract price as value, which many commenters thought was a necessary provision in these regulations, there are limits on the exercise of that discretion.

If valuation in accordance with the second and third benchmarks in paragraph (c) is required, then the lessee also must follow the notification requirements of paragraph (e)(3).

The suggestion that the Secretary should determine whether each contract is arm's-length or non-arm's-length was implied in the rules. However, the MMS has added a clarifying provision to the final rule which provides that the lessee will have the burden of demonstrating that its contract is arm's-length.

Section 206.152(b)(2) of the proposed rules excepted warranty contracts from the general acceptance of gross proceeds as value for arm's-length contracts. One industry commenter recommended that advance MMS approval not be required for the value of gas sold pursuant to a warranty contract since all activities are subject to audit.

Two industry commenters stated that this section should be deleted and that the gross proceeds received by the producer under a warranty contract should be used for determining royalty just as it is for other arm's-length contracts.

Two industry commenters recommended that MMS consider limiting the warranty contracts exception to those contracts entered into before a specific date, such as prior to the mid-1970's.

MMS Response: The MMS has adopted the rule that the value of gas sold pursuant to a warranty contract will be determined by MMS. The issue of limiting the definition of warranty contracts to those executed prior to 1970 was discussed above in the definition of warranty contract.

Most industry commenters strongly disagreed with the language "or which could accrue" contained throughout the regulations. Most companies recommended that the language be deleted. Most commenters stated that the language is too speculative and appears to provide for a second-guess mechanism under which a lessee's sale today can be reviewed in light of knowledge gained at a later date.

MMS Response: The MMS has determined that the phrase "or which could accrue" will be deleted in reference to gross proceeds. Many commenters thought that this phrase would allow MMS to second guess the price which the lessee agreed to in its contract by arguing that other persons selling gas may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it actually receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

One Indian commenter stated that "acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, "and that they do not believe "gross proceeds accruing or which could have accrued in an arm's-length transaction should be determinative of value for gas produced from Indian and Federal leases."

MMS Response: As discussed previously, these rules do not provide for conclusive acceptance of gross proceeds except in well-defined and appropriate circumstances. The MMS believes that the rules as adopted with the changes discussed earlier will result in appropriate values for Indian leases, in accordance with the Secretary's responsibilities.

Section 206.152(c)

Gas which is not sold pursuant to an arm's-length contract is required by the regulations to be valued in accordance with a series of benchmarks. Several State, Indian, and industry commenters disagree with various aspects of the proposed benchmark system because they think that it is vague and subjective. Two State commenters stated that because the majority of gas contracts are not arm's-length, the benchmark system proposed by MMS may be too complex. They recommend that "* * * MMS should study the numerous pricing provisions related to gas sales, and on the basis of the study establish Federal floor values which could be used by lessees to compute a minimum royalty and which would be publicly available."

One State commenter believes that the appropriateness of using the benchmark system depends upon whether the benchmarks are fair and reliable. According to this commenter, "The proposed system would not be fair to the royalty owner because it would lead to the potential for abuse and would certainly result in the diminution of royalties. It would be unreliable because the standards are vague, subjective, and subject to abuse. Unlike the proposed benchmarks for oil valuation, we do not believe that the proposed gas valuation benchmarks can be developed into a fair and workable system. Instead, we believe all the factors listed in paragraphs (c)(1) through (c)(4) should be combined into a single valuation standard." One industry commenter stated that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Many industry representatives and trade groups and one Indian trade group, with minor changes, support the benchmarks and giving them priorities because both will add certainty to valuation determinations. They commend MMS for the recognition of market forces as the principal determinant of value. One commenter stated that "The truest representation of the value of a product is what it can be sold for on the open market, at arm's-length. The proposed benchmarks for valuation of gas under arm's-length contract, non-arm's-length contract, and no contract transactions promote accurate valuation according to the marketplace, and provide rational standards for MMS to follow in monitoring establishment of gas value."

Some commenters stated that the benchmarks should not be prioritized. Rather, value should be determined using the most applicable benchmark. These same commenters recommended combining the first two benchmarks. Other commenters suggested a different ordering of the benchmarks.

MMS Response: The MMS believes that a prioritized benchmark system is a valid and usable system for determining the value of gas not sold pursuant to an arm's-length contract. The system allows the lessee some certainty in determining its own value without dependence upon MMS to establish the value. The suggestion that MMS develop Federal floor values is not feasible or equitable and would be difficult to administer. Therefore, other than some minor modifications, the benchmarks have been adopted as proposed. The MMS believes that the proposed ordering of the benchmarks basically is correct and equitable to both the lessee and lessor. The MMS agrees that the net-back method will not be used frequently. The net-back analysis should only be used where less complex procedures are not feasible. For purposes of this section, MMS does not consider a situation where either transportation or processing allowances are deducted from an arm's-length delivered sales price for gas as a net back. Such procedures will typically be used for royalty valuation. See the discussion of the net-back method above.

The MMS has decided to combine the first two benchmarks. The standard still is the lessee's gross proceeds, but the lessee will be determining comparability against a broader sample which will help ensure that the lessee's gross proceeds reflect the value of the gas in the market, not just what that lessee considers to be the market value.

Some States and Indian lessors stated that when applying benchmarks, it should not be necessary in all circumstances to look to all other sales in the field. In other instances, it may be necessary to look beyond the field. The MMS agrees that the size of any sample cannot be predetermined but must be based upon the actual circumstances in the field or area.

Three Indian commenters stated that MMS's failure to recognize its obligation to maximize tribal royalties is evidenced in the proposed benchmark system. One commenter stated that "MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's comparable contracts in the same field or area, notwithstanding possible underselling during the same period. Plainly, this benchmark is so riddled with potential conflicts of interest that it cannot possibly be urged as consistent with the Federal fiduciary duty to maximize Indian oil and gas resources." Another commenter stated that the proposed

benchmark system is based on the premise that gross proceeds represents market value and "Gross proceeds have always been considered as the minimum value of production because it has long been recognized that price does not always indicate value. The proposed benchmarks appear to treat gross proceeds as the maximum value." This commenter "believes that gas production should be valued at the highest price posted or paid in the field regardless of whether the contract is arm's-length or non-arm's-length * * *." Finally, one Indian commenter stated that "The lease provisions should prevail and should require the Secretary to formulate and implement procedures for the majority portion analysis. These provisions of the regulations should include a statement which indicates that it will not be applied to Indian Tribal and allottee leases. If, however, these provisions will be applied to Indian tribal and allottee leases, then each benchmark should be considered a reasonable option that the Secretary can utilize to determine value and the Secretary should use the reasonable option which brings the highest revenue to the Indian Tribe or allottee."

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his responsibilities to the Tribes and allottees because the value determined in accordance with the benchmarks will be compared to the major portion, with royalties due on the higher value. This process is required by paragraph (a)(3), discussed above.

One industry commenter recommended that "the last benchmark of net-back pricing be eliminated from the list because we believe that it would not be routinely used and would be administratively impractical to implement. The reference to any other reasonable method to determine value should be retained."

MMS Response: The MMS disagrees that the net-back method should be deleted. The net-back method is a viable valuation procedure, even though it will not be routinely used.

One industry commenter stated that "* * * depending upon how one treats 'spot sales', the hierarchy of measures which they establish could result in a substitution of a poorer measure for one that represents the best measure of gas value." This commenter recommended placing spot-sale agreements higher in the hierarchy of benchmarks.

MMS Response: The MMS believes that the position of "spot sales" in the benchmark system is appropriate. The first two proposed benchmarks, combined as one in the final rule, are a better measure of establishing value for royalty purposes than spot sales. The rule has been modified to reference "arm's-length" spot sales.

One industry commenter suggests that the wording of the criteria should be amended to avoid ambiguity in their application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the lessee's arm's-length contracts (first criterion) or the arm's-length contracts of other lessees in the field (second criterion)." This commenter "* * * understands the intent of the proposed regulations is that the proceeds under the referenced arm's-length contracts would be used to set royalties, but the regulation does not expressly so state. Indeed, as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent', then the next criterion in the hierarchy would apply. This ambiguity should be removed."

MMS Response: The MMS disagrees that these provisions are unclear. Under the benchmark system, value will be determined through application of criteria in a prescribed order. In other words, the second criterion would not be considered unless the first criterion could not be reasonably applied. Therefore, if the proceeds under comparable arm's-length contracts in the field are not "equivalent" to the proceeds under the non-arm's-length contract, then the first benchmark does not apply and the lessee should try to apply the second benchmark. If that one also does not apply, then the lessee must apply the third benchmark.

One industry commenter stated that "for making comparisons to arm's-length contracts, when the producer is selling gas to an affiliate and that affiliate is also purchasing gas in the same field or area under an arm's-length contract, the marketing experiences of the parties to the arm's-length contract should be a primary consideration (not just of the volume of gas sold, for example). If the producer under a comparable arm's-length contract is active in the marketplace, it is only reasonable that he would neither accept less nor pay more than the market price for gas. In addition, larger volumes of gas do not always attract a better price than a smaller volume. In some cases, the larger volume is harder to move because it has to be sold in pieces."

MMS Response: The rules, as adopted, require that there be numerous factors considered before an arm's-length contract could be deemed comparable. The purpose for consideration of these factors is to prevent abuses through application of only a few factors so that contracts containing unusually low or high prices could be used.

One industry commenter suggested "an alteration to the proposed regulations under §§ 206.152 and 206.153 to validate any intracompany or affiliate intercompany 'sale', if that transaction is monitored by a regulatory body to determine the market responsiveness of the transaction. Specifically, the commenter suggests that MMS's proposed regulations recognize the FERC's right to determine the justness and reasonableness of (producer) 'first sale' market rates, where those costs are 'passed on' to interstate pipeline sale-for-resale customers via Purchased Gas Cost Adjustment Clauses filed by interstate pipelines as part of their FERC Gas Tariff."

MMS Response: The MMS and FERC have different statutory responsibilities. It is MMS's responsibility to determine the value of production from Federal and Indian leases. Although FERC's actions may be one criterion to consider in determining value, MMS cannot accept them as conclusive.

One industry commenter stated that under the benchmark system it is difficult for an affiliated producer to prove its determination of value, especially with respect to those properties it does not operate. According to this commenter, "The MMS is in the unique position of having access to data, facts, and information that are not readily available to an individual producer. Indeed, attempts to gather such information might violate antitrust laws. Without access to this information on a continuing basis, application of these benchmarks becomes difficult, if not impossible." This commenter recommended "that the burden of proof be shifted to the MMS, such that a rebuttable presumption exists that the gross proceeds accrued to an affiliated producer is reasonable value absent a clear showing to the contrary by the MMS using these benchmarks."

MMS Response: Obviously, a lessee will be able to obtain the necessary data on its sales for application of the first benchmark. The MMS also believes that in most fields or areas lessees will be able to obtain data on third-party transactions. If those data are unavailable, the lessee will have to use one of the succeeding benchmarks, but in no event can the lessee use a value which is less than its gross proceeds. Because values determined under the second and third benchmarks must be

the subject of a notice to MMS (see § 206.152(e)(3) of the final rules), and because a lessee may seek a value determination from MMS (see § 206.152(g) of the final rules), MMS is satisfied that ultimately the lessee will be able to determine the proper royalty value for its gas.

One State commenter noted that it is inappropriate to put the valuation process into a benchmark straight jacket. In addition, this commenter stated that this paragraph permits a lessee to deliberately price its non-arm's-length disposition at the lowest price it can argue to be "comparable" in the field, even where much higher values may be obtained in other dispositions from the field.

MMS Response: A lessee will have many factors to consider in establishing a price under its non-arm's-length contracts, including tax consequences and regulatory concerns. If the price selected is equivalent to the price under comparable arm's-length contracts which must meet the standards in paragraph (c)(1), MMS is satisfied that the price reflects market value and is acceptable for royalty purposes.

One Indian commenter was concerned that the lessee would apparently make the determination as to whether the "arm's-length" contract under which the comparison is made is, in fact, arm's-length. Also, although the data are subject to monitoring, review, and audit by MMS, the commenter believes that in view of the past experience with audits by MMS, the lessees' reporting of gross proceeds under non-arm's-length contracts would remain on the honor system.

MMS Response: Under most valuation procedures MMS considered for these regulations, it would be up to the lessee in the first instance to apply those procedures and report royalties each month. The MMS has adopted rules which it hopes are clear and comprehensible. It must be assumed that lessees will apply the rules properly considering the likelihood of audit and the possibility of significant interest and perhaps penalties for intentional underpayment of royalties.

One industry commenter interpreted the regulations to require that gas sold pursuant to spot-sales contracts would be valued under the first benchmark, even though "spot sales" are mentioned in a later benchmark. In addition, the best measure of value for gas sold pursuant to arm's-length spot sale contracts are those contracts and not other long-term contracts which are not comparable.

MMS Response: If a spot-sales contract is arm's-length, the value of the gas sold under it would be determined pursuant to paragraph (b), not by application of the benchmarks.

Two industry commenters stated that the net-back method should be stricken from this section because the net-back method is to be used as a benchmark only when the preceding benchmarks are inapplicable; therefore, to these commenters it seems inappropriate to include it as a presumed priority when any other reasonable method is what is actually intended.

One industry commenter stated that the reference to net-back method needs clarification. Further, the commenter stated that net-back method is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the production at a point remote from the well.

One State commenter noted that there is no logical basis for favoring valuation on the basis of "gross proceeds" less allowable deductions while disfavoring "netback method". Also, the net-back method is essentially the same thing as "gross proceeds" with allowable deductions.

MMS Response: The MMS believes that the benchmark priority system is appropriate. As explained above in regard to the definition of net-back method, MMS does not anticipate that this method will be used frequently. It generally will be used where the nature of the product has changed (i.e., gas to electricity) and it is necessary to work back from the sales price of the electricity to get a value for the gas.

Section 206.152(d)

Two industry commenters supported the premise that "if the maximum lawful price permitted by Federal law is less than the value determined pursuant to the valuation regulations, MMS would accept such maximum price as value."

One industry commenter recommended deleting the last sentence of this paragraph because gas sold under a warranty contract is valued in the same manner as gas sold pursuant to any other arm's-length contract.

The MMS also received several comments from the Indians and States stating that the rules should specify that State and local price ceilings will not operate to limit the value for royalty purposes.

MMS Response: The final rulemaking adopts this paragraph as proposed, with the addition of a provision that price limitations set by any State or local government will not be considered to be a maximum price permitted by Federal law. Therefore, in some situations, value for royalty purposes may exceed a State or local price limitation.

The last sentence, which is now paragraph (d)(2), was not deleted because the MMS believes that warranty contracts must be viewed differently than other arm's-length contracts for purposes of value. Unlike arm's-length contracts for gas production which is committed to the contract, the seller under a warranty contract often had the sole authority to determine the origin of the gas production to be delivered. Therefore, the seller had the option not to sell particular production from a Federal or Indian lease under the warranty contract and to sell it at a higher price. Thus, although in some NGPA categories the warranty contract price is the maximum price permitted by law for gas sold *under that contract,* it is of the sole decision of the lessee to dedicate gas from Federal or Indian leases to that contract.

Section 206.152(e)

Several industry and State commenters supported establishing a valuation procedure which does not require the prior approval of MMS because it will expedite and simplify the valuation process. Two industry commenters stated that "the time during which the MMS may direct a lessee to pay royalty at a different value should be limited to a specific period so that the lessee is not required to indefinitely retain the records it relies upon to support the value determination." A State commenter noted that "Also, the lessee should be required to retain 'all data relevant to determination of royalty value', not simply the evidence supporting the lessee's claimed value. A lessee should not be allowed to destroy relevant evidence supporting a different royalty valuation, and to retain only that which is self-serving. Also, the regulation should specify that MMS 'will' order compliance when incorrect payments are discovered."

MMS Response: The MMS has adopted in the final rule a valuation procedure that generally does not require MMS's prior approval. The second sentence has been modified to read as follows: "* * * the lessee shall retain all available data relevant to the determination of value." Lessees are required to retain all records to support value determinations for a period of 6 years, unless an audit is ongoing, as mandated by section 103 of FOGRMA, 30 U.S.C. 1713. The lessee is responsible for complying fully with the regulations by properly valuing lease products, for royalty purposes, in accordance with the

appropriate benchmark and to retain all relevant data. The MMS believes that the adopted language clearly states this requirement. The MMS also has adopted in paragraph (e)(2) of the final regulations a requirement that lessees make available to authorized MMS State and Indian representatives, or to the Department's Office of the Inspector General, arm's-length sales and volume data which it has available for like-quality production sold from the same field or area or nearby fields or areas.

Several industry commenters recommended that MMS delete the requirement of proposed paragraph (e)(2) that a lessee must notify MMS if it uses the third or fourth (now second or third) benchmarks because it is not consistent with MMS's self-implementing concept and current MMS auditing and monitoring rights are adequate to allow the MMS to verify royalty compliance.

MMS Response: The MMS believes that what is now paragraph (e)(3) in the final rule is consistent with its self-implementing policy because lessees that determine value pursuant to paragraphs (c)(2) or (c)(3) of this section must notify MMS of their determination after the fact and not before the fact. In every case, value for royalty purposes is subject to future audit. This section has been modified so that the notice is due the end of the month following the month the lessee first reports royalties on the Form MMS-2014 using paragraph (c)(2) or (c)(3).

Section 206.152(f)

One State commenter suggested that a "provision should be made for penalties for willful violations and violations made in reckless disregard of royalty obligations."

Industry representatives commented that if the lessee must pay any difference plus interest, MMS should also pay, when applicable, any difference plus any interest statutorily authorized.

MMS Response: If a lessee knowingly or willfully underpays royalty, it may be subject to civil penalties in accordance with FOGRMA, 30 U.S.C. 1719, and MMS regulations at 30 CFR Part 241. With regard to the second comment, MMS is barred by law from paying interest on royalty overpayments but is required by law (i.e. FOGRMA) to collect interest on late payments.

Section 206.152(g)

This paragraph provides that the lessee may request a value determination from MMS. One State commenter noted that "the lessee should be required to submit 'all data relevant to determination of royalty value'. Again, a lessee should not be able to limit its documentary submittal to evidence which 'supports' its claimed royalty value. Also, because of the impact upon the States and Indians, and in light of the existing cooperative and State audit programs, an opportunity should be given for review and comment on royalty determination requests by the potentially impacted State, Alaska Native Corporation, Indian Tribe or Indian allottee." One Indian commenter suggested that in addition to a lessee, a lessor should at any time be able to request a royalty value determination from MMS. This commenter also stated that "this paragraph should require MMS to notify the Tribe or allottee involved of any change in value determinations."

Six industry commenters stated that "the MMS should impose a time limitation on itself to respond to requests for valuations from a lessee, in the absence of which the lessee should not be held liable for interest or penalties for underpayment of royalty." Further, one industry commenter stated that this section should be used to allow a value determination to be made by MMS which would accommodate the circumstances of a particular lessee when its circumstances do not allow for a definitive value determination under the applicable benchmark. As an example, the commenter stated that although its gas sales are made under arm's-length contracts, the manner in which the gas is marketed (bundled sales of gas from many leases on the spot market to many purchasers) prevents the tracing of the gas produced from any one lease to a particular sales outlet and, thus, the defining of the gross proceeds received from the sale of the gas produced from that one lease.

MMS Response: The proposed language has been modified to require that a lessee submit all available data relevant to its valuation proposal. The MMS does not consider it practical to include in the regulations a requirement for review by the State or Indian lessor when a value determination is made. This does not make the cooperative audit program in accordance with FOGRMA less effective because MMS will make every effort to assist and consult with States and Indian lessors in valuation matters. The MMS also will make every effort to respond timely to requests by lessees, but this is necessarily dependent upon available resources, thus MMS cannot agree to a regulatory time limit. The MMS has added a sentence to accommodate the requested flexibility. Therefore, this section now provides that MMS may use any of the valuation criteria authorized by the regulations when issuing a value determination. The MMS has adopted this change because of the continuing changes in the way gas is marketed.

Section 206.152(h)

This paragraph provides generally that the value of production, for royalty purposes, cannot be less than the lessee's gross proceeds less applicable allowances. One industry commenter recommended that the last sentence be replaced with "* * * allowance determined pursuant to these *regulations.*" Another industry commenter recommended that the phrase "less applicable transportation and processing allowances" be expanded to include "and other cost allowances." Some industry commenters recommended deleting these paragraphs entirely.

MMS Response: For reasons discussed earlier in this preamble, MMS has determined that the phrase "or which could accrue" should be deleted from the final rule. The MMS also has modified this section to refer to all applicable allowances, not just transportation allowances.

Section 206.152(i)

This paragraph addresses the lessee's obligation to place lease production in marketable condition. Several State, Indian, and individual commenters agree with the MMS's proposed provision that costs such as those for compression to meet pipeline pressure requirements to place the gas in marketable condition should be borne by the lessee.

One industry commenter was concerned that "marketable condition" is not a constant, although they acknowledge the lessee should act as a reasonably prudent operator in marketing its products. Many industry commenters believed that the statutory framework and lease terms provide that royalty is due only on the market value of gas as it is produced at the wellhead and any obligation the lessee may have to render the gas marketable does not entitle the lessor to a free ride on those expenses incurred by the lessee subsequent to production. These commenters also believed the lessee is entitled to deduct all reasonable post-production expenses, including any costs incurred by the lessee to make the product marketable.

Some industry commenters recommended deleting this provision because of the changes occurring in the marketplace. They stated that these costs are subject to negotiation and may

be incurred by either party. They believed that it is incorrect to assume that costs incurred by a purchaser have a direct effect on the price to be paid and suggested that the price paid by the purchaser should be used for royalty valuation unless stated specifically in the contract that it was adjusted to cover the subject costs.

One industry commenter noted that the Federal Energy Regulatory Commission has rejected imposition of any national quality standards for gas sold in first sales and has left to each producer-purchaser contract the resolution of which downstream-of-the-wellhead services are to be provided by which party to the contract. Reference was made to FERC Order No. 94–A, 22 FERC 61,55 (1983).

Most industry commenters essentially believed that the lessor should proportionately share in all costs subsequent to production, including the costs of placing production in marketable condition. They believed that all so-called "post production" costs should be shared because such costs are incurred to enhance the value of the production from the lease for the benefit of both the lessee and the lessor; proportionate sharing of those costs would yield a value of production that is equal for both lessee and lessor. These commenters believed that royalty is due on the market value of production at the lease or well, and that proportionate sharing of any post-production costs incurred to enhance the value of production is necessary to meet this requirement.

They stated that, under the proposed rules, no allowance is made for the costs of processing residue gas to place it in marketable condition or for any other post-production costs incurred to dehydrate, compress, or gather the product. They further stated that MMS has abandoned the definition of "associated" and "principal" products but the unjustified concept underlying these terms has apparently been retained.

The industry commenters generally argued that MMS improperly sweeps all post-production operations under the holding of the *California* v. *Udall* case. They stated that MMS goes so far as to say that even if a buyer willingly buys raw, unconditioned gas (i.e., if there is an actual market for such gas in the field), any of the costs the buyer incurs to place the gas in "marketable" condition will be added on to the purchase price of the gas. They believed that this approach totally distorts the concept of market value at the lease, ignores the holding in *Udall*, and exceeds the reasonable and legal limits of the Secretary's discretion. They further stated that the Secretary should recognize the realities of today's onshore leasing and production and that all post-production costs should be deductible but, at the very least, they believed that off-lease post-production and unusual or extraordinary on-lease post-production costs should be shared proportionately.

The industry commenters stated that the MMS should recognize that manufacturing/processing, transportation, and other post-production costs are legitimate deductions necessary to arrive at the value of production, for royalty purposes, at the lease or well and that such costs should be deductible from the value of all marketable products when necessary to reflect the actual expenditures that enhanced the value of the gas after production. They further stated that if MMS continues to rely on the *Udall* holding, its proper application requires a consideration of the purpose served by a particular facility to distinguish between costs "incidental to marketing" and manufacturing or transportation costs.

MMS Response: Historically, the policy and practice of MMS is that the lessee generally is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable. However, MMS has considered carefully all of the comments on this issue and decided that there may be certain circumstances where some extraordinary costs for gathering, compression, dehydration, or sweetening should be allowed as a deduction. Such allowances will be authorized only on the basis of individual cases upon application to the MMS. A new § 206.152(i)(2) was added in the draft final rule which established a two-part test to qualify for a cost allowance. First, only production from unusually high-cost leases qualified. The only leases that qualified were those located north of the Arctic Circle, those offshore leases located in water depths in excess of 400 meters, or those which MMS determined to be a unique gas production operation for purposes of this section. Any leases that did not meet this first threshold could not apply for this allowance. However, even for leases that met this threshold, MMS would not grant an allowance unless the lessee demonstrated to MMS's satisfaction that the costs are, by reference to standard industry conditions and practice, deemed to be extraordinary, unusual, or unconventional. In some instances, MMS may have granted an allowance only to the extent that the extraordinary costs exceeded conventional costs for the same operation.

The MMS received many comments on this new section added to the draft final rules. State and some Indian commenters thought that this section was an unwarranted exception from the requirement that the lessee is obligated to bear the costs of placing gas in marketable condition or that further restrictions should be included, while one Indian commenter endorsed the principle introduced by this new section. Industry commenters generally thought that the new section was a step in the right direction, but thought that the dual qualification process was too rigid. They suggested that the extraordinary allowance be granted if a lessee could meet the requirements of either paragraph (i) or (ii). Industry commenters also suggested that the reference to 400 meters be changed to 400 feet because that is the point at which costs begin to escalate significantly. They also thought that use of the term "unique" was inappropriate because it would limit the applicability to only the first lessee with a particular type of extraordinary operation. Some commenters also requested that when approved, the allowance extend beyond one year.

MMS Response: The MMS has retained the extraordinary cost allowance section with a few modifications. The section still requires that the lessee meet a two-part test, and the reference to 400 meters was retained. The term "unique" has been changed to "extraordinary" because it was not MMS's intent to limit the allowance to a one-of-a-kind operation. The MMS has revised the provisions relating to the approval period so that MMS can now determine the approval period on a case-by-case basis. The MMS still may grant an allowance only to the extent that the extraordinary costs exceed conventional costs for the same operation.

Section 206.152(j)

One industry commenter stated that this provision, as proposed, goes against the firm notion of gross proceeds and grants an exception only in situations where the lessee is entitled to a contractual price increase. According to the commenter, this ignores the reality of the existing situation in the gas marketplace where many purchasers have unilaterally suspended contractually obligated takes and payments under the pretext of "force majeure." The commenter believed that it may be more prudent in many instances to diligently renegotiate contracts which would be in the best interest of the lessee and lessor. The commenter further stated that such renegotiations may take place over an extended period of time during which the lessee may be receiving less than its contract price for its gas; therefore, under these circumstances, where the lessee is taking documented, reasonable measures to force purchaser compliance and to favorably renegotiate its contract, the lessee should only be required to pay royalty on the gross proceeds it receives from the purchaser for its gas.

The industry commenter also stated that rapid deterioration of purchasers' markets has caused unilateral price actions; further, difficult and protracted negotiations have ensued during which proceeds are less than the contractually agreed to price. The commenter mentioned that lengthy litigation is a last resort. The lessor benefits from continued production at market prices pending final resolution and, therefore, a more realistic approach would be to accept proceeds if proceeds were not less than the prevailing market price in the field or area.

One Indian commenter foresaw the ability of willing parties to amend contracts to compromise payments that have accrued to or would accrue to the lessee under its existing contract. The commenter believed that, of course, such contract revisions cannot be avoided in all instances but, if they are made, the lessee should not be able to compromise the lessor's right to receive royalty payments pursuant to the original contract and not under any amendments that have compromised the price.

One State commenter expressed that by freely allowing contract revisions (even retroactive ones), MMS would provide a gaping loophole in the requirement that a lessee seek to enforce its contract "entitlements." The commenter believed that when a lessee is challenged by the MMS about not enforcing its contract rights, there are few buyers who will not agree to assist their sellers by retroactively amending their contracts to the lower amount actually paid.

MMS Response: The MMS has adopted this provision with only minor changes from the proposal. However, the paragraph does not preclude the approach suggested by the commenters. This section requires a lessee to pay royalty in accordance with the contract price, but also expressly recognizes that contract prices may be amended retroactively. The MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper or timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties. However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

Two industry commenters suggested that the phrase "the lessee will owe no additional royalty until monies are * * * received" be reworded to insert the phrase "unless or" before the word "until". They believed that it is contrary to the concept of "proceeds received" to attempt to assess royalty on proceeds which have never been received when only part payment is made to the lessee in contract disputes.

MMS Response: The MMS adopted the suggested change in the final regulation.

One commenter stated that retroactive application of contract revisions may be inconsistent with FOGRMA because it requires that royalties be keyed to production and not to sales. The commenter further stated that timely application by a lessee for a price increase should not be sufficient to allow a lessee to defer payment of royalties until monies or consideration resulting from the price increase are received. The commenter stated that a lessee should be required to go further in pressing its claim for benefits accruing or which could accrue to the lessee under the contract before nonpayment of additional royalties is allowed, perhaps even to the point of instituting litigation.

Two industry commenters stated that the "prudent operator" clause is unnecessary because it is in the lessee's own best interest to obtain the maximum amount of revenue possible under the terms of the applicable contract. They believed that the inclusion of a "prudent operator" standard in the regulations contradicts the concept of using market proceeds and merely serves to impose an obligation on MMS auditors to evaluate and second-guess the prudency of the actions of lessees. They also believed the "prudent operator" clause opens the door to regulatory uncertainty and the basing of royalties on amounts in excess of the market value of gas. They believe the provision should be eliminated.

MMS Response: Although most lessees will try to maximize the amount of revenue possible under the terms of the applicable contract, not all will be diligent. Therefore, MMS must protect the Federal Government's and Indian's interests by using the "prudent operator" clause.

Two industry commenters stated that they disagreed with MMS's attempt to enforce contract entitlements. They believed that, as proposed, royalties would be based on the highest price obtainable and would serve to encourage the pursuit of price increases, rather than the proper payment of royalties based on the prices received. They also believed that this provision is contrary to MMS's own statement that "value is best determined by the interaction of competing market forces, the ⅞ths or ⅛ths owner is going to negotiate the best deal he/she can to further his/her own interest, advancing those of the royalty owners as well;" therefore, they recommended this provision be deleted.

MMS Response: The MMS does not view this provision as contrary to the approach it has taken to determine values. It would be inconsistent with the theme of these regulations for MMS to not require full compliance with its principal value determinant.

Section 206.152(k)

The MMS has added a new paragraph (k) to the final rules which provides that in those situations where MMS may make a preliminary value determination in the course of monitoring compliance with these regulations, that determination will not be binding until MMS has done an audit and the audit formally is closed. The MMS intends to issue further guidelines on when an audit is closed.

Section 206.152(1)

Two individual commenters stated that this paragraph, which was proposed as paragraph (k), appears to preclude the lessor or overriding royalty interest owner from obtaining any information to substantiate the transportation and processing costs he is being charged. Therefore, they are opposed to this provision.

One Indian commenter stated that this provision perpetuates restrictions upon disclosure of data required in reviewing a lessee's computation of royalty. The commenter believed that Indian Tribes should be provided copies of all reports submitted by their lessees to MMS, upon request. The commenter also stated that the Tribes need this information to monitor lessees as well as responsible Federal agencies, and requested that the information provisions be revised to ease release of this information to Tribes subject to reasonable restrictions upon disclosure to third parties.

One Indian commenter stated that this provision should make it clear that all information will be available to Indian lessors and States without going through the Freedom of Information Act procedures. The commenter also stated that to place such a burden on Indian Tribes and States who are the beneficiaries of the production would not be reasonable.

One Indian commenter stated that the scope of this provision is so broad that it effectively denies Indian Tribes and allottees and States access to the information required to assure that valuations are properly determined. The commenter reminded MMS that the intent of the FOGRMA is to provide all interested parties, including Indian Tribes and allottees and States, the data necessary to conduct audits, oversee the audits performed by MMS, and in the case of Indian Tribes, to manage their mineral resources and to plan for governmental operations. The commenter stated that it could not understand why the MMS included this provision inasmuch as the almost unanimous vote of the Royalty Management Advisory Committee on a resolution recommending that the regulations provide Indian Tribes access to data demonstrates that industry also understands that Indian Tribes require and should have access to such data.

MMS Response: The intent of this paragraph is not to preclude access to information for those who are working in concert with the MMS to the extent allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are statutory restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessee or from MMS to the extent provided in lease terms or applicable law. In the draft final rule, MMS changed the phrase "will be maintained" to "may be maintained." Many industry commenters were concerned that this change would allow MMS to release proprietary information. This was not MMS's intent, and to avoid any confusion the term "will" has been substituted for "may."

Section 206.153 Valuation standards—processed gas.

This section is almost identical to § 206.152 and the comments received were also similar. Therefore, MMS will not repeat the section-by-section analysis or response to comments for this section. Interested persons should refer to the corresponding part of § 206.152.

Section 206.154 Determination of quantities and qualities for computing royalties.

Paragraph 206.154(a) establishes procedures for determining the volumes and quality of unprocessed gas that must be used in computing royalties. Three industry commenters were opposed to MMS or BLM assigning a point of royalty settlement that is different from the lessee's sales point where the transfer of title occurs, as stipulated in the lessee's arm's-length gas sales contract.

One industry commenter stated that MMS must recognize that the proper point of royalty valuation is the lease and that MMS cannot confiscate the entrepreneurial profits which are added by downstream activities of the lessee and are not part of the value of the production in which the lessor is entitled to share.

Two industry commenters stated that this provision is inconsistent with the statutes, lease terms, and the proposed gross proceeds valuation methodology.

MMS Response: Historically, MMS has required that royalties be computed on the basis of the quantity and quality of unprocessed gas in marketable condition as measured on the lease unless prior approval to measure off-lease is obtained from BLM or MMS, for onshore and offshore leases, respectively. This will assure the lessor that the total production from the lease is accounted for. This provision is consistent with the statutes, lease terms, and the gross proceeds valuation methodology because this provision establishes a point of royalty measurement upon which a quantity, at a quality, is valued for royalty purposes.

One industry commenter stated that paragraph (a)(2) would adjust the price received under an arm's-length contract in the event that there were some line loss between the point of royalty settlement and the point of sale. The commenter stated that the arm's-length contract whose quantity provisions MMS would modify requires the purchaser to pay only for production which is actually received but, by adjusting the quantity figures, MMS is, in effect, amending, solely for royalty purposes, the deal between the lessee and the purchaser.

MMS Response: The MMS must structure its royalty accounting program to be in concert with the administration of oil and gas leases by the other components of the Department of Interior's full mineral leasing program. As such, this provision simply recognizes that it is the measured production, as required by BLM or MMS operations personnel, that must be valued for royalty purposes.

Paragraph 206.154(b) establishes the procedures for determining the quantity of residue gas and gas plant products on which royalty must be paid. One industry commenter suggested that this provision be reworded to indicate that "net output" means the production from the plant and not tailgate deliveries. The commenter stated that net monthly output could be interpreted to mean plant tailgate deliveries. The commenter said that if this were the case, royalty would not be paid on plant products until they were sold.

Another commenter stated that in current marketing situations, it is impossible to avoid temporary storage of gas plant products. The commenter said that purchasers are nominating volumes they will purchase which may or may not coincide with production. The commenter also stated that royalties should not be paid on production stored until it is sold because in that manner, value can be properly determined. The commenter said that residue gas must be delivered as produced because there will normally be no means by which the lessee can store it.

MMS Response: As adopted at § 206.151(a), net output means the

quantity of residue gas and/each gas plant product that a processing plant produces. Therefore, royalty is due on residue gas and gas plant products at the time they are produced.

One industry commenter stated that this *methodology* of net output is contrary to the MMS concept of gross proceeds accruing from the sale under an arm's-length contract. The commenter said that many gas plants place the net output in temporary storage awaiting sales and that the net output of gas plant products is not valued until removal from temporary storage and sale. The commenter stated that if this paragraph is implemented, it is probable that there would be many MMS audit exceptions as a result of the valuation of net output rather than actual sales from temporary storage facilities.

One industry commenter stated that it may be difficult to establish the value of the product that remains in storage. The commenter also stated that if the lessee is forced to compute a value, then the concept of "gross proceeds" becomes meaningless because the lessee, in effect, becomes the purchaser of the product. The commenter claims that when the product is disposed of at a later date, MMS would have no basis on which to review the proceeds eventually realized by the lessee for sale of the production.

MMS Response: The MMS believes that there is no conflict between the gross proceeds methodology and these provisions. It must be recognized that it is the volume of gas leaving the lease which must be valued, for royalty purposes, and the use of the cumulative value of any condensate recovered downstream of the point of royalty settlement without resorting to a manufacturing process, the residue gas and gas plant products less applicable allowances is the method by which this is done when gas is processed. Therefore, all such condensate, residue gas, and gas plant products attributable to this production must be used in determining value. Adjusting the gross proceeds to reflect the net output attributable to the lease would be accomplished by applying the unit value established by the actual product sales to the portion of the net output attributable to the lease, which was not sold in the month produced. Likewise, if the quantity of any product sold during a month is greater than the net output attributable to a lease because of sales of a quantity of product which was previously placed in storage, the gross proceeds would be reduced. If proper documentation is maintained by the lessee and made available to MMS during an audit, no audit exceptions should result.

Paragraph 206.154(c) establishes the procedure to allocate the net output of a processing plant back to the leases. One industry commenter proposed that the language be modified to reflect the view that any lease allocation method agreed to between a seller and purchaser and/or processor will be deemed acceptable, including methods where the parties are affiliates, subject to review by MMS.

One industry commenter suggested that any contractually prescribed method should be deemed acceptable in preference to "a generally accepted lease allocation method", which may be a contention in the future.

MMS Response: The MMS has adopted a specific procedure for allocating the net output of a processing plant back to leases. The method adopted is the method prescribed by the current regulations. The MMS believes that this procedure is the predominant method used by industry. However, MMS has adopted a provision in the final rule whereby a lessee may request approval of other allocation methods.

One industry commenter suggested the addition of the sentence "This same methodology shall also apply to allocations among unitized and communitized areas." The commenter believed that this inclusion of units and communitized areas was intended.

One Federal agency commenter suggested the modification of the proposed rule to include a tight definition of the term "generally accepted." The commenter said this term should be defined as an allocation method used consistently by a majority of gas plant operators and this method must be in accordance with the method promulgated by an industry group such as COPAS.

MMS Response: The final rule adopted limits the use of methods other than the one prescribed, as outlined above. Therefore, the term "generally accepted" has been eliminated from the final rule. Unitized and communitized areas will be covered under this provision and MMS does not deem it necessary to add a specific reference.

Paragraph (d) prohibits deductions from royalty volume or royalty value for actual or theoretical losses. Indian and State commenters agreed with this provision, stating that no deductions should be allowed for actual or theoretical losses prior to the point of royalty settlement.

Many industry commenters stated that line losses are attributable to several factors. They stated that line losses are partially attributable to metering differences and partially attributable to physical factors, and they are a part of the reality of oil and gas field operations. They believed that the provision should be amended for both valuation and allowance purposes to provide a credit for line loss not attributable to negligence, because such a change in the regulations would be in conformance with FOGRMA. They stated that allowing losses would also make the allowance regulations conform to the overall market orientation underlying the valuation proposal, because costs associated with line loss are commonly explicit components of arm's-length contracts and tariffs.

MMS Response: When a volume of gas, upon which royalty is due, has been determined in accordance with the requirements of MMS's offshore operations and BLM's onshore operations personnel, MMS must collect royalty upon its value. Likewise, it is imperative that the quantities of residue gas and gas plant products attributable to a lease be determined once, and only once, and royalty paid on those volumes. This is consistent with the historical practice of the Department. The treatment of line losses as a cost of transportation is addressed later in this preamble.

Section 206.155 Accounting for Comparison.

In the proposed rule, MMS required so-called dual accounting only in situations where the lessee (or a person to whom the lessee transferred gas pursuant to a non-arm's-length contract) processes the lessee's gas and, after processing, the residue gas is not sold pursuant to an arm's-length contract.

Some industry commenters stated that the removal of the requirement to perform dual accounting for OCS gas sales where the residue is sold pursuant to an arm's-length contract is a substantial improvement in the regulations which will reduce paperwork for both MMS and lessees.

Another industry commenter endorsed the MMS's decision to abolish "accounting for comparison" (more commonly known as dual accounting) for processed gas except where the lessee has no arm's-length contract for the sale of residue gas or where dictated by lease terms. The commenter had no objection to such value comparison if the gas is processed in a lessee-owned plant, and the residue gas is not sold under an arm's-length contract.

Several industry commenters stated that they believed the continuation of dual accounting for most processed gas

in non-arm's-length residue sales is unnecessary. They said that because the residue gas will be valued pursuant to MMS's guidelines in both arm's-length and non-arm's-length situations, the elimination of dual accounting for one and not the other will create substantial administrative effort when both arm's-length and non-arm's-length residue sales occur at the same plant. They also stated that as long as a substantial portion of sales from a plant continue to be arm's-length, which they propose to be set at 25 percent or higher, elimination of the dual accounting requirement for the remainder of that plant will not result in any lesser degree of accuracy in determining market value.

One industry commenter stated that this provision stops short of being totally consistent with other MMS proposals on gas valuation. The commenter said that inasmuch as MMS has determined that there is an acceptable method to value residue gas sales under non-arm's-length or no-contract situations, there is justification for eliminating dual accounting for residue gas valued in accordance with this provision, regardless of the types of sales contracts.

Another industry commenter believes that royalty is due only on the market value of gas, associated products, and oil because they are produced at the wellhead. The commenter stated that the concept of dual accounting under which MMS assesses royalty on either the value of the principal and associated products after processing or the value of the unprocessed gas, whichever is higher, is fundamentally unfair.

Two industry commenters recommended that this paragraph be deleted because dual accounting results in higher value to the lessor than the lessee. They believed that the value should be based upon the value of the unprocessed gas at the lease if the gas is not processed, or upon net realization (gross proceeds minus allowances) if gas is processed, and not the higher of the two. They stated that because the proposed method is applied after the fact, only the lessee bears any losses. Another commenter stated that it would be unfair and inequitable to require the payment of royalty on a basis higher than the value of the processed gas when the value differential is not because of the negligence or imprudent actions on the part of the lessee but instead represents the current market fluctuations for the gas plant products and residue gas. The commenter also suggested the addition of the word "applicable" before the word allowances in paragraph (a)(1).

MMS Response: To ensure that the Federal and Indian lessors receive the proper royalties, MMS continues to believe that dual accounting must be used where the lessee, or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or no-contract situation, processes the lessee's gas and, after processing the gas, the residue gas is not sold pursuant to an arm's-length contract. This provision will encourage the producer under a non-arm's-length contract to obtain the highest price for the gas produced whether that higher price comes from processing the gas or whether it comes from selling the unprocessed gas.

One industry commenter stated that dual accounting imposes an unreasonable accounting burden on both the lessee and the Department and allows the Department to effectively second-guess the lessee each month on the decision to process the gas.

MMS Response: The MMS's current policy is to require dual accounting for all offshore gas processed by the lessee, including affiliates, and for onshore gas processed by the lessee in a lessee-owned plant or onshore gas sold to an affiliate of the lessee and that affiliate processes the gas. Because the requirement for dual accounting adopted in the final rule eliminates some of the current requirements, the accounting and administrative burden should be reduced for both industry and MMS.

Proposed paragraph (b) specifically provided for dual accounting where required by the terms of a Federal or Indian lease. Industry commenters agreed with this provision provided that the lease terms, whether Indian or Federal, specifically require dual accounting.

Three Indian commenters stated that dual accounting should be required for all Indian leases whether specifically stated in the lease terms or not. They stated that this is needed for the Secretary to fulfill his trust responsibilities to the Indians.

MMS Response: The MMS has adopted this provision essentially as proposed.

Section 206.156 Transportation allowances—general.

The MMS received a large number of comments from the States, Indians, and industry on this section of the regulations. Comments on transportation allowances which did not relate to any specific section of the regulations were considered to be addressed to the General section of the transportation regulations, § 206.156. These comments addressed four broad issues—validity issues, adequacy/inadequacy issues, post-production costs and other cost issues, and issues relating to the definition of terms.

1. One issue concerned the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Some State and Indian commenters stated that transportation allowances should only be granted when necessary (1) to market the product, (2) to promote development of the lease, (3) to obtain a higher royalty value, (4) to enhance offshore development, or (5) if the royalty revenue increases enough to offset the allowance. The key word in these comments was "necessary." None of the parties believed that any transportation allowance should be given if it was not necessary. A State representative suggested approving the transportation allowances on the basis of individual cases only if necessary.

One Indian commenter stated that only the reasonable, actual, and necessary transportation costs from a lease boundary to a point of sale should be allowed and the costs should not include any profit or allocated overhead from the regional or home office.

One Indian commenter stated that the regulations should establish transportation allowances as an exception, not as a rule.

Several Indian commenters stated that MMS should not grant any transportation allowances as a deduction against Indian royalties. The commenters opposed the transportation allowance for Indian leases for such reasons as (1) Indian leases do not provide for transportation as a deduction from royalty, and (2) transportation allowances have never been granted for Indian leases.

The Indian commenters emphasized that MMS must take into account its trust responsibility to the Tribes and allottees in preparing valuation regulations. These commenters advised that MMS must protect the Indians' interests.

The MMS received comments from Tribes and State representatives asserting that the royalty interest should be cost-free. These comments all stressed that royalties have always been and should always remain free of costs. All commenters believed that the costs of making lease production marketable,

including transportation, are the responsibility of the lessee. A State representative suggested that MMS "* * * keep the door closed on all presale costs. Once it's opened, it's hard to let only the chosen ones in."

MMS Response: Based on Interior Board of Land Appeals decisions, Solicitor opinions, and judicial decisions, it has been DOI policy since 1961 to grant transportation allowances when production is moved to a sales point off the lease in order to calculate the value of the product at the lease. Furthermore, the IBLA has specifically ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the transportation allowance regulations being adopted are consistent with past practice and consistent with the Secretary's responsibility to the Indians. The MMS believes generally that royalty should be free of cost. However, values may need to be adjusted for transportation and/or processing to determine value at the lease. The MMS believes that the policy of granting transportation allowances to properly value lease production is appropriate and should continue.

2. Another issue concerned the adequacy or inadequacy of the proposed gas transportation regulations in general. Some commenters believed that the regulations were generally deficient, while others pointed to specific instances where changes should be made to improve their specific applicability. Following is a brief summary of these types of comments.

Some industry and State respondents commented on the flexibility of the regulations. One industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements. Another industry commenter suggested that the regulations should accommodate changes in transportation and marketing. One State representative expressed concern that the regulations do not address new marketing opportunities related to the unbundling of pipeline services and market area gas storage which allow for greater sales levels in higher priced periods.

The MMS received comments from Tribes regarding the relationship between the lease terms and the regulations. One commenter requested that the regulations not be allowed to change the lease terms. Another commenter stated that the regulations should be consistent with the lease terms. A third commenter stated that where the lease is silent, the regulations should not allow the gross proceeds received under an arm's-length contract to be reduced for transportation costs.

The MMS received comments regarding the effect of transportation allowances on revenues. A State organization stated that MMS should develop simple and concise rules that do not adversely affect Western States' revenues, and which will allow for more effective auditing. One Tribe requested that the royalty rate not be decreased in effect by redefining the rate basis. One local community commenter stated that the proposed regulations should not be issued without assessing the impact on the school or other local subdivision budgets. Five local community commenters opposed the proposals on the grounds that deductions would be taken too liberally, or perhaps royalty payments would be eliminated completely.

One Tribe stated that the regulations should apply only to new leases. One industry party and one Tribe recommended that a separate set of regulations be developed for Indian lands only.

MMS Response: The MMS believes that the regulations are complete and are sufficiently flexible to apply to the different types of gas transportation arrangements that might arise in the future. MMS is aware of nothing in the transportation allowance regulations that would change the terms of any Indian mineral lease. The MMS agrees that the procedure for determining a transportation allowance places initial reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit transportation allowances has been maintained under the new regulations. The MMS believes that the consideration of transportation costs is necessary to determine the value of lease production at the lease.

3. One broad issue discussed by commenters was the deduction of post-production costs and other costs from royalty payments.

The MMS received many comments concerning the issue of post-production costs as an allowable deduction from royalty. Many industry commenters commented in favor of allowing all post-production costs to be deducted from the royalty portion.

MMS Response: This section of the regulations addresses only transportation allowances. The issue of post-production cost allowances is properly addressed in other sections of the regulations.

4. One issue commented on by several commenters concerns the definition of terms used in the regulations.

Some industry respondents commented that the term "reasonable" should be deleted from this section. One industry concern was that this term will only result in a wide diversity of opinion as to what a reasonable cost is.

One industry representative suggested that the term "actual" should be deleted for clarification purposes.

The MMS received several comments from the States, Indians, and industry suggesting that the term "remote from the lease" should be defined or changed. An industry representative stated that many terms, such as "remote" and "field gathering" beg for definition. This commenter requested that a distinction between "gathering" and "transportation" be delineated, for royalty purposes, and also suggested that the term "remote" should mean anything outside the lease boundary. Two industry commenters identically recommended changing this phrase to "first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance.

The MMS agrees that the term "gathering" should be defined. The definition of "gathering" has been included in § 206.151 and was discussed above. The phrase "remote from the lease" has been deleted from the final rule which uses the phrase "off the lease."

Section 206.156(b)

The MMS received several comments on paragraph (b), proposed as paragraph (c), which requires that transportation costs be allocated among all products transported. The paragraph also provides that no allowance may be taken for transporting products which are not royalty-bearing.

Industry commenters recommended deletion of this paragraph. One industry representative stated that transportation costs represent the rate for moving the aggregate product stream. The industry commenters stated that allocation is an administrative burden and is unfair and inequitable, and it is inequitable to require allocation of transportation costs for the incidental movement of nonroyalty-bearing products.

One industry representative recommended that transportation costs be taken as an aggregate charge against the value of the full product stream.

One industry representative stated that this paragraph adapts an unrealistic transportation deduction exception by

not allowing a transportation deduction for nonroyalty-bearing products. According to this commenter, practical realities dictate that nonroyalty-bearing products entrained with gas be transported.

MMS Response: The MMS does not agree in principle with the commenters proposal that the cost of transporting nonroyalty-bearing substances should be shared by the lessor. Therefore, this regulation has been retained as proposed. The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would only be burdensome in a few instances where the products being transported are not all in the same physical state.

Section 206.156(c)

Paragraph 206.156(c) was proposed as paragraph (b). The MMS received a large number of comments on this provision which limited the transportation allowance to 50 percent of the value of the product transported. The comments on this paragraph related to one major topic: whether the limitation should be eliminated or retained.

Industry commenters and trade group representatives stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: (1) If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; (2) The 50-percent limit could impose a serious economic deterrent to the development of frontier areas; (3) The limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; (4) It would be a rare case when a natural gas transportation cost would come close to the proposed 50-percent cap, much less exceed it; (5) The proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Several commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee.

Many industry commenters and trade groups stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. According to the commenters, this procedure should be applied to all transportation systems, but it would be especially important in the frontier areas. One commenter from industry stated that MMS should not permit roll forwards because it would create paperwork and allow the lessees to use the 50-percent limit permanently.

Industry commenters and trade groups stated that the 50-percent limit could be a disincentive for exploration and for building transportation systems when costs exceeding the cap may not be recovered.

One State representative stated that the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

MMS Response: The MMS has decided generally to retain the 50-percent limit on transportation in the final rule. For unprocessed gas valued pursuant to § 206.152, the transportation allowance deduction based on a selling arrangement is limited to 50 percent of the value of the unprocessed gas determined in accordance with § 206.152. For processed gas, the transportation allowance for gas plant products or residue gas based on a selling arrangement is limited to 50 percent of the value of the residue gas or gas plant product determined in accordance with § 206.153. Natural gas liquids are considered one product.

A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. Thus, the 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance based on reasonable actual costs will exceed that limit. In no event may the allowance for any lease product equal 100 percent of the value of that product. MMS received comments that the transportation allowance in excess of 50 percent should be allowed only when it is in the "best interests of the lessor." MMS did not include this standard because it is too subjective. The requirement that the costs be "reasonable, actual and necessary" is sufficient to protect the lessor's interests.

Section 206.156(d)

The MMS received comments from industry representatives on this paragraph (d), which recommended that MMS should be required to pay interest on overpayments by lessees to the extent permitted by law.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.157 Determination of transportation allowances.

Paragraph (a) of the regulations addresses transportation allowances where the lessee has an arm's-length contract for transportation services. The MMS received many comments on this paragraph of the regulations. Although there were comments on a wide variety of subjects, 11 principal issues were addressed: Acceptance of arm's-length transportation agreements; excessive penalty and retroactive approvals; MMS's approval of the transportation allowances; acceptance of transportation reduced prices; status of currently approved allowances; required filing every 12 months; allowance on nonroyalty-bearing production; allocation of transportation costs; suggested deletion to regulations; period for filing a proposed allocation; MMS payment of interest on lease overpayments; and clarification of the conversion process.

1. Acceptance of arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Industry commenters supported the proposal to accept arm's-length contract costs as a reasonable transportation allowance. These commenters explained that arm's-length contracts provide an accurate indicator of "reasonable actual costs" because they reflect the true costs to the lessee for transporting production to a sales point downstream of the lease.

Some Tribes expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Tribe stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. One Tribe expressed doubt that there can ever be an arm's-length contract between companies in the gas industry. Another Tribe stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. One Tribe also expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian trade organization stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length contracts (and non-arm's-length contract situations).

MMS Response: The MMS currently uses the payments made by a lessee under an arm's-length transportation agreement as an accurate indicator of reasonable, actual costs. The MMS has

determined that payments made under arm's-length contracts are the best available indicator of reasonable, actual costs incurred by the lessee. MMS has added a sentence clarifying that the lessee has the burden of demonstrating that its contract is arm's-length. MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to paragraph (b). The first situation is where MMS determines that the transportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor.

2. Disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295.

The MMS received responses from several industry commenters and industry trade groups stating that the disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295 is an excessive penalty for what was considered by the commenters to be such a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4295 before the Form MMS–2014 is filed.

Many commenters stated that the regulations should have a provision allowing transportation allowances on a retroactive basis because a lessee does not always have the details on transportation worked out before production begins. Thus, it sometimes is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing current oil and gas markets.

It was suggested that MMS should consider a monetary fine for failure to file, or disallow the deduction for any period until Form MMS–4295 is filed. The lessee would not lose a deduction, but would be precluded from taking the deduction until the proper forms are submitted to MMS for the periods covered.

MMS Response: After careful consideration of the comments, MMS has determined that the reporting penalties included in the proposed regulations were excessive. The MMS has also considered the comments on retroactive approvals and has revised the final regulations to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, paragraph (d) of the final rules provides that if a lessee deducts a transportation allowance on a Form MMS–2014 without complying with the requirements of this section, the lessee will owe interest on the amount of the deductions until the date proper forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed because of the limitation on retroactivity.

3. The MMS's preapproval of transportation allowances.

The proposed rule provided that prior MMS approval was not required before a lessee could deduct a transportation allowance based on an arm's-length contract. Representatives of trade organizations, oil and gas companies, and one business expressed approval of the self-implementing concept for transportation allowance regulations. This was seen as a method of relieving a considerable administrative burden on both industry and MMS. Tribes disagreed with the self-implementing nature of the regulations because it was seen as a method of establishing the 50-percent limitation as a floor for transportation allowances.

One Tribe stated that MMS should preapprove all transportation allowances and should do so only on a showing of necessity to promote development or a showing that a higher value could be obtained for the gas at a point of sale away from the lease. It was also pointed out by this commenter that neither the MMS nor Indian Tribes have the resources to audit all leases and, if these allowances are not monitored "up front," they will never be audited.

MMS Response: The MMS considers arm's-length contracts a valid indicator of reasonable, actual costs. Thus, it is not necessary to preapprove transportation allowances based on such contracts. The MMS will monitor the transportation allowances, and they are subject to later audit.

4. Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations.

Representatives of oil and gas companies and trade organizations commented that MMS should accept transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations. It was believed that this policy would reduce the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was considered a potential technique to exceed the 50-percent limitation provisions of the regulation.

MMS Response: The MMS has determined that the regulations should be revised to provide that transportation factors which reduce arm's-length sales contract or posted prices are to be considered as reductions in value rather than transportation allowances. This provision is included in paragraph (a)(5).

5. Should current approved transportation allowances remain in effect until they expire?

Industry respondents stated that the transportation allowance reported on Form MMS–4295 should continue until the applicable contract or rate terminates, or is modified or amended. State respondents stated that, because some allowances are currently being taken without specific, written MMS approval, only those with documented approval should be allowed to continue without the submission of Form MMS–4295.

MMS Response: The MMS has revised the regulations in paragraphs (c)(1)(v) and (c)(2)(v) to provide that any transportation allowances in effect on the date these regulations become effective will be allowed to continue until such allowances terminate subject to later audit. However, MMS is limiting this provision only to those allowances that have written MMS approval. Because the regulations are being revised to remove any prior approval by MMS before a deduction may be taken, and the submission of Form MMS–4295 is to increase MMS's ability to monitor the allowances being taken, MMS believes that the intent of the final rules will be best served by having all allowances to be deducted under the new rules documented as of the effective date.

6. Should MMS require the filing of Form MMS–4295 every 12 months?

Industry representatives stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred, and there is no apparent reason for MMS to require the filing of Form MMS–4295 every 12 months. One industry representative recommended that this section be deleted.

MMS Response: The MMS requires the annual filing of Form MMS–4295 for use as a control and monitoring mechanism even when there is no change in the applicable contract or rate.

7. Should MMS allow transportation allowances for production which is not royalty-bearing.

Several industry representatives suggested deleting this section and proposed that transportation costs be taken as an aggregate charge against the value of lease production or that MMS cover cost allocation methodology in the MMS Royalty Management Program Oil and Gas Payor Handbook. One industry respondent recommended deleting any references concerning the disallowance for transporting lease production which is not royalty-bearing.

MMS Response: The MMS will not allow transportation allowances for production which is not royalty-bearing. The final regulations in §§ 206.156(b), 206.157(a)(2), 206.157(a)(3), 206.157(b)(3), and 206.157(b)(4) will expressly so provide.

8. Allocation of a cost applicable to more than one product.

One industry representative stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on relative volume. One business representative suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

Another industry representative recommended that allocation be based on the weighted average value of each product having a commercial value in that area. According to this commenter, transportation costs should not be allocated to by-products or products with no commercial value.

An industry representative suggested using an allocation procedure only when substantial volumes of nonroyalty-bearing products are being transported because of the considerable costs and reporting burdens involved in allocating costs.

MMS Response: The MMS has determined that allocating costs on the basis of relative volume rather than on relative value is more equitable because of the price fluctuations of products and in many instances the allocation of costs based upon value of products would defeat the purpose of the regulations. In situations involving the transportation of both gaseous and liquid products, it is difficult for MMS to provide guidance on acceptable methods of allocation because of the many different circumstances that exist. The MMS believes it would be advantageous to have the lessee submit an allocation proposal to MMS in these situations.

9. Should MMS extend the period in which to submit a proposed allocation method?

Representatives from industry suggested periods of 90–180 days, instead of the proposed 60-day period, to submit a proposed allocation method where an arm's-length contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

Representatives from oil and gas companies and one trade organization stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload burden, and a more reasonable provision of time would be from 90 to 180 days.

MMS Response: The MMS has modified § 206.157(a)(3) of the final rule to provide a 3-month period.

10. Should MMS pay interest on lease overpayments?

One industry commenter stated that MMS should pay interest on overpayments consistent with statutory authority.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

11. Clarification of the conversion process.

Two respondents from the oil and gas industry commented that proposed paragraph (a)(5), concerning the conversion of payment to a dollar-value equivalent, should not be adopted because it is too complicated. If it is retained, it should be clarified with guidelines.

MMS Response: The value of production upon which royalty is due is reported to MMS as a dollar value; therefore, MMS believes that any deduction from that value when determining the royalty due also must be expressed as a dollar value. The MMS does not consider the conversion to a dollar-value equivalent to be complicated. This requirement is included in § 206.157(a)(4) of the final rules.

Paragraph (b) establishes the procedures for claiming a transportation allowance where the lessee has a non-arm's-length transportation contract or has no contract. The comments received under this section addressed eight principal issues: Acceptance of State or FERC tariffs, use of the benchmark system, penalties, prior approval, allowable costs, rate of return, retaining Alternatives 1 and/or 2, and allocation of costs.

1. Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances? Many industry commenters and trade groups stated that MMS should accept published State or FERC tariffs as the transportation allowance in nonarm's-length and no-contract situations. These commenters believed that MMS should rely on the expertise of FERC and State agencies that set pipeline tariffs to determine fair and reasonable transportation charges. Several industry representatives stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS.

MMS Response: The MMS has reviewed the FERC procedure for granting tariffs. After careful consideration, MMS has decided that the fairest and best way to determine transportation allowances for non-arm's-length or no-contract situations is to allow actual, reasonable costs plus an acceptable rate of return on the lessee's undepreciated capital investment. The MMS will recognize FERC tariffs as a valid cost in computing a transportation allowance only when it is an actual (out-of-pocket) expense pursuant to an arm's-length transportation contract. Existence of a FERC-approved tariff for a transportation system, however, is one of the requisite criteria for MMS to consider in granting an exception to the requirement to use actual costs for non-arm's-length or no-contract situations. See discussion below.

2. Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Several industry commenters and trade groups stated that MMS should allow the market value of the transportation service based on a benchmark system.

For those commenters recommending a benchmark system for determining the transportation allowance, the commenters suggested that MMS allow the lessee the market value of the transportation service based on a benchmark system featuring arm's-length contracts and tariffs and cost accounting to be used only as a last resort. It was suggested that this procedure was in keeping with the market-based concept and objective of bringing certainty to the regulations.

MMS Response: It is MMS's past and present practice to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" or any other benchmark criterion may include costs such as Federal and State income taxes,

or socioeconomic costs incurred by the lessee in order to obtain State or county land access, such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base gas transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.157(b)(5) will provide a limited exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to MMS for the exception, and MMS may grant the exception only if (1) the lessee has arm's-length contracts with other persons for transportation through the same transportation system; (2) the lessee has a FERC-approved tariff for the system; and (3) at least 50 percent of the annual throughput is transported under arm's-length transportation contracts. If the MMS grants the exception, the lessee will use as its transportation allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts.

In the draft final rules MMS had included as the third standard a requirement that the persons purchasing the transportation from the lessee had an alternative to using the lessee's system. MMS received many comments from industry that this standard made the exception illusory because, in most instances, there is only one pipeline. MMS agreed and, therefore, changed the third standard to the requirement that at least 50 percent of the lessee's annual throughput is transported under arm's-length transportation contracts.

3. Should a penalty be imposed for late submission of the Form MMS–4295?

One industry commenter objected to the penalty of disallowing a transportation allowance for failure to file the applicable Form MMS–4295.

One industry spokesperson stated that the lessee should be assessed a fee of $10.00 per day for each day the Form MMS–4295 is not received.

One industry commenter suggested 120 days as a reasonable time in which to submit a completed page one of Form MMS–4295.

MMS Response: MMS has determined that the reporting penalties included in the proposed rule were excessive. MMS also has considered the comments on retroactive approvals and has revised the final regulations in § 206.157(b)(1) to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that the Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, (d) provides an interest assessment for taking a transportation allowance without complying with the reporting requirements of the regulations, as well as a requirement that a lessee repay the amount of any deduction disallowed because of the limitation on retroactivity.

4. Should MMS require prior approval for allowances?

Several industry commenters and one trade group commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed.

States and Indians stated that prior approval of allowances should be required. Because of the numbers of selling arrangements involving costs, these commenters were concerned that as a practical matter MMS will not question or audit the majority of deductions.

One Indian Tribe commenter stated that prior approval should be required before overhead expenses and depreciation are allowed; otherwise, transportation allowances will be subject to abuse and Indian royalties will suffer.

One Indian Tribe representative stated it was not proper to allow depreciation, unless prior approval and prior audit is required.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered preapproval and preaudit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4295. Therefore, with limited exceptions, no prior MMS approval will be required. However, the lessee will be required to file a completed Form MMS–4295 before taking the allowance.

5. Should costs other than actual, reasonable costs be considered in calculating the transportation allowance?

Industry commenters stated that State and Federal income taxes are legitimate expense items and should be allowed.

One industry spokesperson recommended that dismantling costs be included in the calculation of transportation allowances because this is a real cost of doing business.

One trade group representative recommended that MMS reformulate the transportation provisions to allow a firm or entity providing necessary transportation services a complete recovery of costs plus an acceptable profit for assuming the risks involved in providing transportation service.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments.

6. What rate of return should be used to calculate return on capital investment?

Industry commenters, trade groups, private businesses, one city mayor, and Indian Tribes stated that the use of the Moody Aaa corporate bond rate proposed by MMS in paragraph (b) is inequitable for the rate of return. Following are some of the reasons provided by the respondents for this viewpoint:

a. The prime rate represents a nearly risk-free return on short-term borrowing.

b. The use of Moody's Aaa bond rate assumes minimal risk and 100-percent debt financing.

c. For fairness, a rate of return must consider both cost of credit and equity capital.

d. A rate of return based solely on a prime lending rate would not make the investment in the transportation system a competitive project when compared with other projects.

e. The choice of Moody's Aaa rated debt is very conservative and arbitrary.

Industry commenters and trade groups recommended various alternatives to the Moody Aaa corporate bond rate:

a. A rate equal to 150 percent of the 20-year T-bill rate.

b. The prime rate plus 5 percent.

c. One and one-half times the average 30-year T-bill rate.

d. The 20-year corporate industrial bond rated Baa.

e. A yearly average of the monthly rate for 20-year T-bills.

f. The 20-year corporate industrial bond rated Baa plus 9 percentage points.

g. One and one-half times the prime rate.

h. The FERC tariff rate of return.

i. The before-tax rate of return of double the Moody's Aaa bond rate.

j. A specific rate of return should be determined for each lessee.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to build a transportation system. The MMS is not persuaded that a rate of return should include a profitability factor as a part of the transportation allowance. The MMS has examined the use of the corporate bond rate very carefully and has concluded that the use of such a rate would be feasible and would be appropriate for use as a rate of return considering the risks associated with the transportation of gas and gas plant products. There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move gas that has already been discovered is a much different risk (and a risk that can reasonably be insured against) than the risk associated with the drilling of a well. Considering the risks related to transportation systems, a rate of return based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, Standard and Poor's bond rate, and the other rates suggested by the commenters. The rate of return used by FERC was not considered because MMS does not believe that the FERC tariff procedure and the MMS transportation allowance are sufficiently similar to warrant the use of similar procedures. The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.157(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments received on this issue, including comments on the draft final rule that the BBB bond rate is not much better than the first proposal, MMS soon will issue a notice of proposed rulemaking to consider further modifications to this section.

7. Should MMS retain the provisions of Alternative 1 and/or Alternative 2?

Some industry commenters recommended that MMS retain both alternatives of depreciation and return on initial depreciable capital investment. One industry commenter and one trade group stated that both alternatives should be included in any cost-based methodology for determination of a transportation allowance. One industry commenter recommended that both methods be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments.

Two industry commenters and one trade group stated that MMS should retain Alternative 1. One industry spokesperson sought clarification on Alternative 1 to ensure both depreciation and return on depreciated investments are allowed.

One trade group representative endorsed Alternative 2, provided that its use is an option for the lessee. One industry commenter supported Alternative 2, suggesting that the initial capital investment should be the basis for depreciation of any newly acquired transmission facility or gas plant. One trade group representative stated that Alternative 2 should be applicable to instances where a lessee has purchased a transportation system that has previously been depreciated to some extent. One private business representative stated that Alternative 2 should be available without the limitation on new or newly acquired transportation systems because it provides a viable substitute where original cost records no longer exist.

One industry commenter recommended not adopting Alternative 2 because it provides a significantly lower rate of return to the lessee.

Two commenters stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that if the intention is to provide the lessee with a rate of return for his invested capital, the lessee should not be penalized by a diminishing return caused by tying the return into a depreciation option. One industry representative stated that, based on the current Moody's bond rate, Alternative 2 should only be advantageous for projects with over 30 years of life.

One industry commenter stated an inequity could result in the case of transferring transportation facilities from one party to another because it may be impossible to allocate specific capital costs to particular segments for purposes of determining the depreciation cost allowance and the return on undepreciated capital investment cost allowances. One industry commenter stated that MMS should accept a depreciation method recognized by FERC whether or not the method is one of the two suggested. According to the commenter, this would eliminate the administrative burden of maintaining another set of depreciation records. One Federal agency commenter suggested there be no restriction on the depreciation method used.

Several industry commenters stated that disallowing recapitalization is inequitable. One industry representative stated that the rule, as proposed, prohibits a new owner from recovering his costs because those costs would be based on the present market value of the pipeline. One industry commenter stated that it would be administratively burdensome to disallow recapitalization because it would require the lessee to maintain two separate sets of books on depreciation, one for normal business and one for royalty purposes. One industry representative stated that prohibiting establishment of a new capital cost based upon the sale or transfer of a pipeline is inconsistent with both the philosophy of arm's-length transactions and of approving an allowance based on actual costs.

Two industry commenters stated that the regulation should be more specific on how the lessee must adjust for continuing changes in reserves. For example, the continued development of different unitized depths in complex geologic areas or in areas with multiple leases will result in the continued redetermination of reserves.

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 and concluded that both alternatives should be retained. However, under the final rule, § 206.157(b)(2)(iv)(B), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay its share for the depreciation of a system transporting royalty-bearing gas only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation

facilities in operation on the effective date of these regulations.

The use of reserve life as a depreciation method is at the election of the lessee. If the method does not serve the lessee's needs, then a different depreciation method may be chosen. If the reserve life method of depreciation is chosen, it would be entirely appropriate for the lessee to adjust the reserve life when changes in reserves occur.

The MMS has determined that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee cannot be altered by a change in ownership.

8. Should costs be allocated among lease products?

Two industry commenters and one trade group suggested deletion of the sections requiring allocation of costs (§§ 206.157 (b)(3) and (b)(4) of the final rule). Two industry representatives stated that requiring allocation of transportation costs is an unjustified expense to the lessee and a burdensome administrative task for both industry and MMS.

One industry commenter stated that allocation of costs among products is at odds with the basic valuation equation.

MMS Response: MMS believes that the cost to transport a product should correspond with the product transported. MMS recognizes that accountability is difficult and allocation may be a burdensome task but there is no acceptable way to avoid this responsibility.

Section 206.157(c)

The MMS received many comments from industry, States, and Indians on paragraph (c), which establishes reporting requirements for transportation allowances.

The comments received addressed the following issues: General comments pertaining to the requirement to file for allowances, comments on the initial 90-day submittal period, the subsequent annual requirement to submit Form MMS–4295, Gas Transportation Allowance Report, establishment of alternate reporting dates, and miscellaneous comments.

1. The requirement to submit a Form MMS–4295 in order to claim a transportation allowance.

Two industry commenters commend the MMS for proposing an allowance that does not require prior approval. One industry commenter and one trade group disagree with proposed Form MMS–4295 because it requires too much information and puts a burden on industry. One trade group representative stated that MMS should substitute a form entitled "Intent to Take a Transportation Allowance" in lieu of the complicated annual filings proposed. One State representative stated that the reporting scheme would demand a major commitment of resources and would be difficult to administer. One trade group commenter stated that submission of Form MMS–4295 will greatly increase the paperwork of both industry and MMS. Two industry commenters stated that, without proper public review and comment, they cannot endorse the use of Form MMS–4295. Ten commenters—seven industry and three trade groups—stated that provision should be made for allowances currently in effect on the effective date of the regulations to continue until the allowance expires to avoid an undue administrative burden on MMS and lessees. Some commenters also pointed out that flexibility is needed to deal with special circumstances such as spot sales contracts.

MMS Response: Form MMS–4295 is required in order for MMS to monitor the transportation allowance program. The MMS believes it can monitor the transportation allowance deductions more effectively than with the preapproval of the allowances. The MMS has made the information on Form MMS–4295 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The filing of a Form MMS–4295 equates to an "intent to deduct transportation."

For arm's-length contracts, paragraph (c)(1) requires the filing only of page one of the Form MMS–4295. Pursuant to paragraph (c)(2), for non-arm's-length contracts, the lessee must submit the entire form. For transportation allowances in effect on the effective date of these rules (which includes only those approvals from MMS which are in writing), no form needs to be filed until the allowance terminates. See § 206.157 (c)(1)(v) and (c)(2)(v). These continued allowances will be subject to audit.

The MMS has also included in paragraphs (c)(1)(vi) and (c)(2)(vii) of this section authority to establish reporting requirements different from those in the regulations where necessary to accommodate special circumstances.

2. Requirement to file a Form MMS–4295 within 90 days after the end of the reporting period.

One industry commenter stated that a 120-day filing period should be permitted for filing Form MMS–4295 to ease the administrative burden. This commenter suggested that if the form is not received within the prescribed 120 days, the lessee could be assessed a fee of $10.00 per day for each day the form is not received. One industry representative suggested that a minimum 180-day conversion should be allowed from the date of publication of the final regulations.

One trade group representative agreed that a 12-month term should be endorsed for both onshore and offshore allowances. One industry representative recommended that allowances be based on data from a full calendar year and be reported to MMS by April 1 for the preceding year. Nine commenters, seven industry and two trade groups, stated that an annual reporting request is unduly burdensome and that lessees should only be required to file Form MMS–4295 when there is a change in the allowance amount.

Industry representatives stated that failure to file a completed Form MMS–4295 should not result in a denial of allowances because this constitutes a substantial penalty.

One industry spokesperson stated that to ease MMS's workload, each lessee should be assigned a particular due date for filing all forms. One Indian trade group was concerned over the provision establishing different reporting dates from those specified in order to provide more effective administration.

MMS Response: The final regulations in § 206.157 (c)(1)(iii) and (c)(2)(iii) give the lessee 3 months after the end of the previous reporting period to file the required forms. Also, as described earlier, the final regulations allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS. Therefore, even if the lessee is not able to timely file the Form MMS–4295, the lessee could file the Form MMS–4295 and claim the transportation allowance on a corrected Form MMS–2014 at a later date.

The MMS concurs with a 12-month term and the final regulations require that a Form MMS–4295 will be filed on the basis of a calendar-year.

3. Miscellaneous comments received.

One industry representative stated that MMS should continue its policy of not requiring reporting or approval of reduction in sales prices which reflect transportation. One industry commenter recommended that deductions taken as an offset against price should be accepted by MMS without the necessity of filing Form MMS–4295.

MMS Response: In situations where the purchaser is reducing the contract price for a transportation cost and the lessee is incurring no out-of-pocket expense, a Form MMS–4295 is not

required. In these situations, because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the gas, the reduction in price for the transportation costs past the point of sale would be considered.

Section 206.157(d)

MMS has added a new § 206.157(d) to the final regulations. This paragraph requires a lessee that deducts a transportation allowance from its royalty payments before complying with the requirements of this paragraph (i.e. filing the proper forms) to pay interest from the date it improperly took the deduction until the form is filed. As noted above, pursuant to paragraph (c), the lessee also will be required to pay back any allowance deducted more than 3 months prior to the first day of the month the proper forms are filed, plus interest.

Section 206.157(e)

This section was proposed as paragraph (d) and provides an adjustment procedure where the estimated allowance differs from the actual allowance.

Industry representatives commented that the MMS proposal for handling interest payments is unfair, and stated that "It is equitable that, if the lessee must pay any difference in royalty owed plus interest, MMS should also pay any difference plus interest statutorily authorized."

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Several industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would relieve the immense administrative burden on MMS and industry. One oil and gas company recommended that actual data from one period be used as the allowance for the following period, thus requiring no adjustments.

MMS Response: The MMS considered alternatives such as (1) rolling forward differences into subsequent periods or (2) using actual data from one period to be used as the next period's allowance, but determined that such procedures could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees. Consequently, MMS has decided to retain the estimated and actual cost procedure.

Two oil and gas companies commented that refunds for estimates tendered in excess of actual costs should not be classified as refunds of a royalty payment under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. It was the firms' position that the OCS Lands Act, section 10, does not require requests for refunds when estimated costs are less than actual costs and stated that the concept of estimate versus payment is clearly discernible. "Payment" is defined as a discharge of indebtedness, while "estimate" is a rough or approximate calculation, not an overpayment.

One oil and gas company commented that the current extensive review and audit process is causing lessees to lose the time value of money in the refunds which are due them under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful, and it was suggested that MMS consider transportation allowance adjustments to be exceptions to the refund requirements. Overpayments could then be recovered by line-item adjustments on Form MMS–2014.

Two oil and gas companies strongly emphasized that the requirement to submit written requests for refunds for under deducted transportation costs in accordance with section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden for industry and the MMS.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is reviewing the issue and will provide guidance to lessees.

Three oil and gas companies and one trade organization representative rejected using prior year actual costs for the current reporting period, stating that it automatically requires retroactive adjustment. They recommend that lessees be allowed to use forecast rates based on their knowledge and experience with the operations. Three oil and gas companies proposed that MMS establish an allowable range and not require retroactive adjustments if performance is within the allowable range.

One oil and gas company recommended using market-based allowances, requiring a single entry and resulting in fewer adjustments and fewer transportation records to be reviewed. One oil and gas company recommended that, to reduce costs, adjustments should be made by a single entry each year, not monthly.

MMS Response: The MMS was unable to develop an acceptable accounting methodology that would eliminate retroactive adjustments of prior period tentative transportation allowances for non-arm's-length and no-contract situations. The final regulations do, however, permit a lessee to adjust its estimates in the succeeding period based on forecasted rates.

Section 206.157(f)

Paragraph (f) of this section was proposed as paragraph (e) and, as proposed, provided that no cost is allowed for transportation which results from payments for actual or theoretical losses. The MMS received many different comments on this paragraph from industry, trade groups, and 1 U.S. Senator. Generally, the commenters stated that line losses are actual costs of doing business, should be allowable, and that this paragraph of the regulations should be deleted.

Industry commenters and the U.S. Senator commented that line losses are actual transportation costs which should be allowed by MMS. One industry commenter stated that line losses occur beyond the control of the lessee and are practical and legitimate occurrences. Another industry commenter stated that such allowances are real transportation costs borne by the lessee. Seven industry commenters stated that MMS should allow line losses not attributable to negligence.

Three commenters—two industry and one trade group representative—commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One industry commenter stated that if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff because the losses are part of the total cost of the transportation arrangement. One industry representative stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance. Other commenters recommended deletion of this paragraph.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. Because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length and no-contract situations. However, the final rule provides that costs associated with payments for losses under arm's-length transportation

agreements should be allowed because the payment is an out-of-pocket expense to the lessee.

Section 206.157(g)

The MMS received comments on § 206.157(g), which was proposed as paragraph (f). This paragraph allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back method.

The industry respondents stated that use of cost-based transportation allowances is inequitable when using net-back valuation because actual costs incurred should be recognized. According to these comments, if MMS collects royalty on the enhanced downstream value, MMS should bear its share of actual costs incurred to move the hydrocarbon for sale downstream.

MMS Response: The MMS remains convinced that the cost-based allowance procedure for determining gas transportation allowances is appropriate for determining value under a net-back procedure.

Section 206.158 Processing allowances—general.

The processing allowance regulations are almost the same as the transportation allowance regulations. As expected, therefore, most of the comments were the same. Because responding to the same comments and explaining the same regulatory section is duplicative and unnecessary, in this section MMS generally will respond only to comments and explain regulatory provisions which are unique to gas processing allowances.

Section 206.158(a)

The MMS received many different comments from Indians, industry and States as well as some other persons on paragraph (a) of this section of the regulations, which generally provide for a processing allowance. Comments on gas processing allowances, which did not relate to any specific section of the regulations, are addressed in this paragraph of the gas processing regulations.

One industry representative cautioned that, although the final processing regulations must contain certainty, they should also be flexible enough to encourage innovative marketing of the gas plant products. Similarly, one State agency said that the proposed regulations must reflect the changing nature of industry, serve to encourage rather than discourage new projects, and allow existing operations to identify new markets.

MMS Response: The MMS believes that the regulations are complete and sufficiently flexible to accommodate different types of gas processing arrangements that might arise in the future. The MMS further believes that the regulations are reasonable. To not discourage new development, MMS has provided an exception process whereby a lessee may be able to justify a processing allowance in excess of the 66⅔-percent limitation and has provided the lessee with broad latitude to deduct processing costs under arm's-length contracts. For processing under non-arm's-length and no-contract situations, MMS has provided the lessee with several alternatives for depreciation and return on investment. MMS also has provided for an extraordinary cost allowance for processing gas production. The MMS does not believe that the objectives of certainty and flexibility should replace the Federal Government's responsibility to properly account for the removal of minerals from a Federal or Indian lease.

One industry commenter and one industry trade organization thought that this section should incorporate a provision to include the deduction of fractionation costs.

One industry commenter and one industry trade representative recommended that processing allowances continue to be granted on the basis of percentage of value.

MMS Response: The regulations, as adopted, accommodate fractionation costs as part of the processing allowance cost. Therefore, a specific provision is not necessary. The MMS has determined that an allowance based on a cost per unit is more equitable and will result in less difference between actual and estimated allowances than an allowance based on percentage, especially in times of rapid price fluctuations.

Section 206.158(b)

Paragraph (b) of this section requires allocation of processing costs among gas plant products. Comments were received principally from industry.

There was general opposition from industry to the allocation of processing allowances by gas plant product. They recommended either to delete this paragraph or to rewrite it in such a manner as to allow all processing costs in full to be deducted from the value of both the residue gas and gas plant products. One industry representative proposed a change which would allow the allocation of processing costs to both the value of gas plant products and residue gas.

One industry representative stated that the cost of processing should not be allocated to one product when it benefits all products. One industry trade group stated that the allocation of costs among products is contrary to the valuation principle that the value of production should equal the sum of all gross proceeds less the sum of all post-production costs.

Two industry representatives plus one industry trade group recommended that if allocation of costs is necessary, allocation should be based on percentage of sales rather than on a cost per unit; that is, based on value rather than volume. Two industry representatives and one trade group thought that the allocation of costs presents an administrative burden for both industry and MMS.

MMS Response: It has been a longstanding MMS policy and regulatory requirement that no processing allowance be granted against the value of residue gas. Among the reasons for this is that processing is viewed as necessary to place the residue gas in marketable condition and that processing does not generally enhance the value of residue gas. Thus, generally no processing allowance is authorized against the value of the residue gas in the final rule. The MMS believes that allocating processing costs based on relative volume rather than on relative value is more equitable because the costs of extracting any given product may be unrelated to that product's value.

Section 206.158(c)

As proposed, paragraph (c) of this section generally limited the processing allowance deduction to two-thirds of the value of each gas plant product. The MMS received a large number of comments on this paragraph.

Most industry-related commenters expressed their objection to the 66⅔-percent limitation on the processing allowance, and the exclusion of residue gas value from the allowance determination. Other commenters supported this position.

One State representative suggested that the limitation creates a floor and feared that a 66⅔-percent processing allowance will be taken as an automatic deduction.

An industry trade organization commented that in processing a sour, low quality gas stream, the 66⅔-percent limitation does not reflect actual costs to industry. This trade group plus four industry commenters stated that in high-cost or low-quality areas, the limitation will discourage development.

Many industry commenters recommended, in lieu of a strict limitation, that the 66⅔-percent level be a threshold, above which an allowance will be granted according to specific criteria. For example, one industry commenter recommended a higher allowance upon MMS approval. Another industry commenter requested that a higher allowance be approved on the basis of "national interest" criteria.

Some industry commenters stated that MMS should allow lessees to carry forward processing costs otherwise allowable (except for the 66⅔-percent limitation) from the current year to subsequent years.

The MMS also received several comments from parties who supported the proposed 66⅔-percent limitation on the processing allowance, including two oil producers, one interest owner, one State representative, and one State and Tribal organization. Another oil producer added that it opposed increasing the limitation. One interest owner stated that the limitation should be lowered.

An additional comment from a State and Tribal organization stated that it favors the exclusion of residue gas from the allowance determination. An Indian trade group stated its objection to the Director approving an allowance in excess of 66⅔ percent.

Six parties (one oil producer, one State representative, one interest owner, two industry parties, and one State and tribal organization) stated their opposition to a "carry forward" provision for costs exceeding the 66⅔-percent limitation. One industry commenter stated that such a process would be "impractical."

MMS Response: The MMS has devoted considerable time and effort in evaluating the 66⅔-percent limitation on the processing allowance, and the exclusion of the value of residue gas from the allowance computation. Section 206.158(c)(2) of the final rule provides that the processing allowance deduction on the basis of an individual product cannot exceed 66⅔ percent of the value of each gas plant product at the point of sale determined in accordance with § 206.153. No processing allowance may be taken against the value of the residue gas, except for certain extraordinary allowances specifically approved by MMS in accordance with paragraph (d), discussed below.

The 66⅔-percent limit is to be applied against the value of the product already reduced by any extraordinary cost allowance and any transportation allowance for transportation costs incurred after the gas is processed. Transportation allowances related to transportation from the field to the processing plant would not be deducted before applying the 66⅔-percent limitation.

The MMS has retained in the final rule a procedure whereby the lessee may request an exception from the 66⅔-percent limitation. The lessee must demonstrate that any costs in excess of the limitation are reasonable, actual, and necessary. This procedure will allow MMS to monitor more closely those situations where the allowance based on reasonable, actual costs will be in excess of the 66⅔-percent limitations. Under no circumstances may the processing allowance equal 100 percent of the value of any product. As with transportation allowances, many commenters suggested that any additional allowance must be in the "best interests of the lessor." As stated earlier, MMS believes that this standard is too subjective and that the standard included in the rules will protect the lessors' interests.

Industry respondents and industry trade groups stated their objection to the requirement regarding substitution of other products for residue gas in situations where residue gas is absent. One industry trade group stated that, in this situation, the lessee should be able to deduct the processing costs against the sum of all marketable products. Industry commenters recommended that this sentence be deleted. Industry commenters were also concerned that this paragraph would prohibit an allowance from being taken against all gas plant products if the residue gas was returned to the lease for reinjection or other uses.

MMS Response: The MMS did not intend, where residue gas was returned to the lease, that this provision would require the lessee to designate at least one gas plant product as being placed in marketable condition as a result of processing. The provision was intended to cover those situations where no residue gas was produced at the plant at all due to the absence of, or very low levels of, hydrocarbons in the gas when produced from the well. However, because the extraordinary processing allowance procedure discussed below would most likely be applicable in these situations, MMS has modified the final rule to eliminate the requirement that the lessee designate a gas plant product against which no allowance would be granted. Instead, the final rule provides that MMS may designate a gas plant product against which no allowance would be applied should circumstances warrant.

Section 206.158(d)

The MMS received many comments on paragraph (d) of this section, which provides generally that no processing cost deduction will be allowed for the costs of placing lease production in marketable condition. Comments were received from industry, Indian Tribes, local businesses, a town mayor, a Federal agency, and individuals.

The major issue raised in this paragraph was whether costs associated with placing a product in marketable condition, generally referred to by the commenters as post-production costs, should be deductible from royalty.

All industry-related commenters, the local businesses, and one town mayor supported the concept that all post-production costs be allowable deductions from royalty.

Industry commenters expressed their view that certain post-production costs should be deductible from royalty. One industry trade group stated that the costs related to the manufacture and sale of separately marketable products are extraordinary and should be allowed. One industry commenter stated that "* * * other off-lease post-production costs and certain 'extraordinary' on-lease costs" should be deductible.

MMS Response: MMS already has addressed the post-production cost issue with regard to other sections of these regulations. Generally, post-production costs, excluding those for transportation and processing, are not allowable deductions from royalty. Post-production costs for the services of gathering, separation, measurement, dehydration, compression, and sweetening are considered to be a requirement to place the lease production into marketable condition, at no cost to the lessor. These costs generally are not considered part of the processing costs and, therefore, are not deductible in a processing allowance.

MMS has included in the final regulations a new § 206.158(d)(2). Pursuant to this paragraph, if a lessee incurs extraordinary costs for processing gas production, it may apply to MMS for an extra allowance above that to which it otherwise would be entitled pursuant to these regulations. The allowance is discretionary with MMS, but may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions, extraordinary, unusual, or unconventional. Under this paragraph, an allowance could be provided against the value of the residue gas. For the same reasons discussed above with

respect to extraordinary cost allowances for certain gas production, MMS has removed any reference to "unique" processing operations. It is not MMS's intent to limit the allowance to one-of-a-kind plants. MMS also has included flexibility for longer approval periods.

Section 206.159 Determination of processing allowances.

Section 206.159(a)

The MMS received a large number of comments from States, Indians, and industry. Again, most of the issues raised in the comments were the same as for the corresponding section of the transportation allowance regulations and will not be repeated.

Two industry commenters responded in favor of the provision in § 206.159(a)(1) whereby MMS would accept costs incurred under arm's-length processing agreements as the reasonable, actual costs incurred by the lessee because they thought these arrangements reflect true processing costs experienced by the lessee. One Indian Tribal trade group opposed this proposal because of the concern that under these procedures the Indian lessor's royalty could be reduced to virtually nothing.

MMS Response: The MMS believes that processing costs incurred by a lessee under arm's-length agreements represent actual costs to the lessee and should be appropriate as a processing allowance. MMS has added a provision clarifying that the lessee has the burden of demonstrating that its contract is arm's-length. Under the provisions of these regulations, the lessor's royalty cannot be reduced to zero. Also, as with transportation allowances, MMS has added two paragraphs which provide that MMS will treat as non-arm's-length any processing contracts which reflect more than the consideration actually transferred from the lessee to the processor (i.e., the cost is inflated) or where there is misconduct by or between the contracting parties or the lessee otherwise breaches its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor.

With regard to the requirement of § 206.159(a)(2) that processing costs be allocated among all products, one industry commenter was critical of the proposal to treat all NGL's (but no other plant products) as one product. The commenter thought this was discriminatory toward the lessees in favor of processors of wet gas, not only because some lessees typically will be able to recover total processing costs from the value of the NGL's, but if other products are produced, costs would need to be allocated to them, with the possibility that some of these costs would not be totally recovered. This industry representative stated that all of the marketable products should be treated as one product, including residue gas, for purposes of allocating processing costs. Another industry representative made proposals which would make the allocation procedure unnecessary.

MMS Response: The NGL's, historically, have been considered one plant product, for royalty purposes, because they are commonly extracted first as raw make at an extraction facility. MMS has determined that all other individual plant products must be evaluated separately for processing allowances for the reasons stated previously.

Section 206.159(b)

The MMS received a very large number of comments on § 206.159(b), which provides for a processing allowance determination where the lessee has a non-arm's-length contract for processing or no contract. Comments were from industry commenters, industry trade organizations, State representatives, a Federal agency, an interest owner, local businesses, and from a town mayor.

The major issues addressed regarding this paragraph were (1) the requirement of a lessee's actual costs versus use of a benchmark system, (2) the use of "Alternative 1" or "Alternative 2" for depreciation or a return on capital investment, and (3) the rate of return on capital investment. These issues are basically the same as for the transportation allowance and have been responded to. However, some comments were specific to processing costs.

Industry comments disagreed with the proposal under this paragraph to base allowances on cost accounting procedures.

Industry commenters explicitly voiced their support for a market value concept; i.e., MMS should accept the market value of service for the allowance determination. One industry commenter added that under the proposed methodology, MMS ignores "competitive market forces." Another industry commenter requested that MMS adopt a "market-oriented" approach. Still another industry commenter stated that if a non-arm's-length contract for processing reflects the market value for that service, it should be acceptable.

The industry commenters specifically recommended that MMS should adopt a benchmark system for allowance determinations under this section. These commenters suggested that comparable arm's-length contracts be used to determine the allowance for non-arm's-length processing arrangements in the same facility. One of the industry commenters added that the use of comparable arm's-length contracts will reduce the number of adjustments and other records to be filed.

One State representative opposed a benchmark system.

Four industry commenters and one industry trade group complained that cost accounting is a departure from the valuation requirements and that it discriminates against lessee affiliates.

Another industry commenter recommended that if plant ownership interest is sufficiently small, it should be treated as an arm's-length arrangement.

MMS Response: The MMS considered a benchmark valuation system featuring comparable arm's-length contracts to determine processing allowances, with cost accounting being used as a last resort. MMS concluded that such a procedure is not the fairest and best way to determine gas processing allowances considering the overall interests of industry, the Federal Government, States, and Indian Tribes. The MMS does not believe that allowances generally should be valued on a "market-based system" the way products are valued for royalty determination purposes for several reasons.

First, the determination of an allowance on a "market-based system" would not be representative of a lessee's actual, reasonable costs. Second, if one lessee bases its allowance on actual costs, and another lessee processing gas in the same facility bases its allowance on market value, an inequity will result.

For these reasons, MMS has decided that generally the gas processing allowance is best determined on actual, reasonable costs plus a return on undepreciated capital investment, or its initial capital investment. However, MMS has included in § 206.159(b)(4) of the final rules a provision whereby a lessee may apply to MMS for an exception from the requirement to use actual costs. MMS may grant such an exception, at its discretion, only if two conditions are met: (1) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (2) at least 50 percent of the gas processed at the plant is processed pursuant to arm's-length processing contracts. MMS has decided not to include a third requirement that the persons purchasing processing services from the lessee had a

reasonable alternative to processing at the lessee's plant. Industry commenters noted that there often is no choice for the purchaser, thus the third requirement would render the exception unrealistic. If the exception is granted, the lessee must use as its allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts at the same plant. Although some State and Indian commenters expressed concern over deviating from a true cost-based approach, MMS is satisfied that if these conditions are met, the processing allowance will reflect the market and that MMS will be able to monitor the use of these allowances.

Two industry commenters stated that State and Federal income taxes should be considered as allowable costs on the premise that such costs are real, tangible costs to the lessee.

Two other industry commenters suggested that plant dismantling and abandonment costs should be allowable, advising that such costs are a real cost of doing business.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. Therefore, income taxes are not an appropriate expense that should be included in the processing allowance. The MMS takes the position that, because it does not participate in the profit or losses from the sale of processing facilities, no costs for dismantling and abandonment should be included in processing allowances.

The basic issue regarding requirements to allocate processing costs among all plant products is discussed under § 206.158(b). However, specific comments pertaining to the allocation under non-arm's-length and no-contract situations are discussed here.

Industry commenters disagreed with the requirement to allocate costs on generally accepted oil and gas accounting principles. One of these commenters recommended deleting this requirement. Other commenters advised that generally accepted principles for cost allocation do not exist. One commenter suggested instead that allocations be based on (1) cost-benefit analysis, and (2) cause-and-effect relationships.

One industry commenter recommended that this requirement be modified to include an allocation of costs to residue gas.

MMS Response: The MMS believes that if cost-benefit analysis and cause-and-effect relationships are generally acceptable procedures in cost allocation, these procedures would be acceptable to MMS. MMS will consider cost allocation procedures for unique situations on the basis of individual cases in order to arrive at an equitable allocation procedure. As stated previously, MMS believes that it is not appropriate to allocate processing costs to residue gas.

Section 206.159(c)

The MMS received several comments on paragraph (c) of this section which addresses reporting requirements for processing allowances. Again, this paragraph is virtually identical to the corresponding provision for transportation allowances, and the response to comments for that section is, for the most part, applicable here.

The two major areas of concern were (1) use of Form MMS–4109, and (2) the terms of the reporting periods and filing timetables.

Industry commenters and Indian Tribes expressed some opposition to Form MMS–4109. One industry respondent and one industry trade group objected to commenting on the form until it is published, adding that it should not conflict with any rights of the lessee. Several industry commenters opposed the filing of Form MMS–4109 at all. One of the industry commenters stated that processing rates under an arm's-length or non-arm's-length contract should be accepted at face value. An industry trade group claimed that filing of the form would be an unnecessary burden for both industry and MMS. Another industry commenter stated that it opposed any reporting requirements such as annual renewals or contract change updates. A Tribe opposed industry taking an allowance on the honor system and merely filing a form to claim it.

MMS Response: The MMS believes that Form MMS–4109 must be required in order for MMS to monitor the processing allowance program. The MMS believes it can effectively monitor the processing allowance deductions without the preapproval of the allowances. The MMS has made the information on Form MMS–4109 as clear and uncomplicated as possible considering the complex nature of processing allowances. The filing of a Form MMS–4109 does not conflict with any lease provisions or rights of the lessees. The MMS agrees that the proposed procedure for determining a processing allowance places initial reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit processing allowances has been maintained under the new regulations.

The initial concern about reporting periods was MMS's proposal to create a new reporting period for all allowances which would commence the date the new regulations are effective. Industry commenters opposed this, recommending instead that all existing allowances be grandfathered under the new regulations. Another industry commenter requested 180 days for conversion to the new reporting period.

Another topic addressed by the respondents was the term of the reporting period. Industry commenters favored a reporting period that extends as long as the contract terms are effective, instead of an arbitrary 12-month period. One of the industry commenters stated that resources are wasted by requiring the lessee to file year after year even though there are no changes. However, one industry commenter and one industry trade group endorsed the 12-month reporting period. The industry commenter specifically requested a calendar-year period.

Two industry commenters recommended a longer grace period in which to file subsequent Forms MMS–4109. These commenters both suggested 120 days to file updated forms.

MMS Response: The MMS concurs with a 12-month term and the regulations have been changed to allow filing of Form MMS–4109 by calendar year. The regulations have also been changed to allow a grace period of 3 months. The MMS also decided that existing allowances (but only those approved in writing by MMS) will continue in effect until they expire, subject to later audit, with the exception of processing allowances for OCS production which are based on non-arm's-length or no-contract situations. Because these allowances are based upon a procedure radically different from the procedure adopted in the final rule, they will continue in effect until they expire or until the end of the calendar year, whichever occurs first.

Section 206.159(d)

Paragraph (d) of this section is the same as for transportation allowances. If a lessee deducts a processing allowance without filing the proper forms, it will owe interest on the amount of the deduction until the proper forms are filed, subject to the 3-month retroactivity provision.

Section 206.159(e)

As with transportation allowance adjustments, the issues regarding paragraph (e) of this section were (1) the requirement to file adjustments, (2) the refund procedure under Section 10 of the

OCS Lands Act, and (3) the payment of interest.

It was the general consensus that adjustments were a very large burden on both industry and MMS and that some way should be found to eliminate the need for so many adjustments resulting from differences between actual and estimated processing allowances. Six industry representatives and two industry trade groups recommended that positive or negative differences between estimated and actual costs should be rolled forward into the processing allowance for the subsequent period, or prospectively.

One industry commenter asserted that retroactive adjustments should not be necessary if the actual allowance falls within an allowable range of the estimated allowance, and two other industry commenters suggested rolling forward small differences into next year's costs within an allowable range.

One industry commenter proposed single-entry adjustments for an entire year instead of month-by-month adjustments. This party also made the comment that if a market-based allowance was permitted, it would be more certain and fewer adjustments would be necessary.

MMS Response: The MMS expended considerable effort in an attempt to arrive at an accounting methodology that would eliminate retroactive adjustments of processing allowances and continue to be fair to industry, MMS, and Indian lessors, but was unable to do so.

One industry representative stated that overpayments, when estimates were less than actual costs, should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process.

MMS Response: The refund procedure will not be specified in these regulations. MMS is reviewing the issue and will provide guidance to the lessees on refund procedures.

Industry representatives commented that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that, if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized. Another issue of concern was the payment of interest requirement.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.159(f)

Paragraph (f) of this section requires that the provisions in this section will apply to determine processing costs in situations where value must be established under other methods such as net-back.

One industry commenter recommended that the definition of "net-back method" be clarified.

MMS Response: A definition of the net-back method has been included in § 206.151, which is slightly different from that proposed. The MMS believes this revised definition clarifies MMS's intent.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations, to clarify the DOI gas royalty valuation policy, and to provide for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0075.

Lessee reporting requirements will be reduced. All gas sales contracts, transportation agreements and gas processing contracts, as well as any other agreements affecting value, will be required to be retained by the lessee, but will only be required to be submitted upon request rather than routinely, as under the existing regulations.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date:

Assistant Secretary Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202 and 206 are amended as follows:

PART 202—ROYALTY RATES AND RENTALS

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§§ 202.150, 202.151, and 202.152 [Redesignated as §§ 202.100, 202.53, and 202.52]

2. Sections 202.150, 202.151, and 202.152 of Subpart D are redesignated as new §§ 202.100 under Subpart C, 202.53, and 202.52 under Subpart B, respectively.

3. A new Subpart D consisting of §§ 202.150, 202.151, and 202.152 is added to read as follows:

Subpart D—Federal and Indian Gas

Sec.
202.150 Royalty on gas.
202.151 Royalty on processed gas.
202.152 Standards for reporting and paying royalties on gas.

Subpart D—Federal and Indian Gas

§ 202.150 Royalty on gas.

(a) Royalties due on gas production from leases subject to the requirements of this subpart, except helium produced from Federal leases, shall be at the rate established by the terms of the lease.

Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to 30 CFR Part 206 of this title multiplied by the royalty rate in the lease.

(b) (1) All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease to which this subpart applies is subject to royalty.

(2) When gas is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of the appropriate agency or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty free.

(3) Where the terms of any lease are inconsistent with this subpart, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that gas was avoidably lost or wasted from an OCS lease, then the value of that gas shall be determined in accordance with 30 CFR Part 206.

(d) If a lessee receives insurance compensation for unavoidably lost gas, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e) In those instances where the lessee of any lease committed to a Federally approved unitization or communitization agreement does not actually take the proportionate share of the production attributable to its Federal or Indian lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. The value for royalty purposes of that production will be determined in accordance with 30 CFR Part 206. In applying the requirements of 30 CFR Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion, as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

§ 202.151 Royalty on processed gas.

(a) A royalty, as provided in the lease, shall be paid on the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing, the residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this subpart. The MMS shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal and Indian leases. Processing allowances shall be determined in accordance with Subpart D of 30 CFR Part 206.

(b) A reasonable amount of residue gas shall be allowed royalty free for operation of the processing plant, but no allowance shall be made for boosting residue gas or other expenses incidental to marketing, except as provided in 30 CFR Part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of each lease's residue gas necessary for the operation of the processing plant shall be allowed royalty free.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

§ 202.152 Standards for reporting and paying royalties on gas.

(a) (1) Gas volumes and Btu heating values, if applicable, shall be determined under the same degree of water saturation. Gas volumes shall be reported in units of one thousand cubic feet (mcf), and Btu heating value shall be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F, except that for OCS leases in the Gulf of Mexico, gas volumes and Btu heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F. Gas volumes and Btu heating values shall be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed by Federal Energy Regulatory Commission (FERC) regulation, or on the basis prescribed in the lessee's gas sales contract provided that the sales contract does not conflict with FERC regulation.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract shall be used to determine Btu heating values for reporting purposes. However, the lessee shall measure the Btu value at least semiannually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b) (1) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.

(2) Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL) volumes shall be reported in standard U.S. gallons (231 cubic inches) at 60 °F.

(4) Sulfur (S) volumes shall be reported in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. The title of Subpart A is changed to read "Subpart A—General Provisions" and a new § 206.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in 30 CFR Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name, and filing date	OMB No.
MMS-4109—Gas Processing Allowance Summary Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010-0075
MMS-4110—Oil Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010-0061
MMS-4295—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed unless a longer period is approved by MMS	1010-0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting

and audit responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands. The reports are required to receive a benefit.

§§ 206.106 and 206.107 [Removed]

3. Sections 206.106 and 206.107 are removed from Subpart C.

4. Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

Sec.
206.150 Purpose and scope.
206.151 Definitions.
206.152 Valuation standards—unprocessed gas.
206.153 Valuation standards—processed gas.
206.154 Determination of quantities and qualities for computing royalties.
206.155 Accounting for comparison.
206.156 Transportation allowances—general.
206.157 Determination of transportation allowances.
206.158 Processing allowances—general.
206.159 Determination of processing allowances.

Subpart D—Federal and Indian Gas

§ 206.150 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the specific provisions of any statute, treaty, settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the lease, statute, or treaty provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

(e) Notwithstanding the provisions of this subpart, for any lease in which an Alaska Native Corporation has acquired an interest subject to section 14(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g)), the value, for royalty purposes, of the proportionate share of production from that lease which corresponds to the Alaska Native Corporation's proportionate interest in the lease will be determined in accordance with the regulations, guidelines, and Notices to Lessees in effect at the time the Alaska Native Corporation acquired any proportionate interest therein, or for interests acquired after the effective date of these regulations, at the time the Alaska Native Corporation selected or designated such interests for conveyance under sections 12 and 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611 and 1613).

§ 206.151 Definitions.

For purposes of this subpart:

"Allowance" means an approved or an MMS initially accepted deduction in determining value for royalty purposes. "Processing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for processing gas, or an approved or MMS initially accepted deduction for costs of such processing, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery off the lease, unit area, communitized area, or away from a processing plant, excluding gathering, or an approved or MMS initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 20 through 50 percent creates a presumption of control; and

(3) Ownership of less than 20 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month. a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Compression" means the process of raising the pressure of gas.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gas" means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

"Gas plant products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

"Gathering" means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to: take-or-pay payments; reimbursements for severance taxes; and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production. Monies and other consideration including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-sharing arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Marketing affiliate" means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of gas at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, or from the value of the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by comparison to other sales of such products, to ascertain value at the lease.

"Net output" means the quantity of residue gas and each gas plant product that a processing plant produces.

"Net profit share" (for applicable Federal and Indian leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Posted price" means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Residue gas" means that hydrocarbon gas consisting principally of methane resulting from processing gas.

"Section 6 lease" means an OCS lease subject to Section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

"Take-or-pay payment" means any payment received by a lessee under a "take-or-pay" clause in a sales contract. Such clauses normally require the purchaser to take or, failing to take, to pay for a specified minimum volume or other measure of lease products.

"Warranty contract" means a long-term contract entered into prior to 1970, including any amendments thereto, for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of

this obligation may come from fields or sources outside of the designated fields.

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, § 206.153 of this subpart shall apply instead of this section. This section also applies to processed gas which must be valued prior to processing in accordance with § 206.155 of this subpart.

(2) The value of production, for royalty purposes, of gas subject to this subpart shall be the value of gas determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value of production for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field. The major portion will be calculated using like-quality gas sold under arm's-length contract from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold.

(b)(1)(i) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas. If the contract does not reflect the total consideration, then the MMS may require that the gas sold pursuant to that contract be valued in accordance with paragraph (c) of this section.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the gas production be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the gas.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods.

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(3) A net-back method or any other reasonable method to determine value.

(d) (1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed in paragraph (d)(1) of this section shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e) (1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The

letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method under paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i) (1) The lessee is required to place gas in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(2) If the lessee incurs extraordinary costs for the gathering, compression, dehydration, or sweetening of gas production subject to this section from frontier or deep-water areas, or from a gas production operation recognized by MMS as extraordinary, and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) the costs are associated with leases located north of the Arctic Circle, the costs are associated with OCS leases located in water depths in excess of 400 meters, or the costs are associated with an extraordinary gas production operation which MMS approves as eligible for the provisions of this paragraph; and

(ii) the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS in a form and manner prescribed by MMS. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.153 Valuation standards—processed gas.

(a) (1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.152 of this subpart. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas.

(2) The value of production, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this part, less applicable transportation allowances, processing allowances, or other allowances determined pursuant to this subpart.

(3) (i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty

purposes, if data are available to compute a major portion MMS will, where practicable, compare the values determined in accordance with this section for any lease product with the major portion determined for that lease product. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field, or for residue gas or gas plant products from the same processing plant, as applicable. The major portion will be calculated using like-quality lease products sold under arm's-length contracts from the same field or processing plant (or, if necessary to obtain a reasonable sample, from the same area or nearby processing plants) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold, or for gas plant products, 50 percent (by volume) plus 1 unit.

(b)(1) (i) The value of the residue gas or any gas plant product which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit. For purposes of this section, residue gas or any gas plant product which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting these reviews and audits, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product. If the contract does not reflect the total consideration, then the MMS may require that the residue gas or gas plant product sold pursuant to that contract be valued in accordance with paragraph (c) of this section.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the residue gas or gas plant product because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the residue gas or gas plant product be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the residue gas or gas plant product.

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods.

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality residue gas or gas plant products from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant products;

(2) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For the purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed by paragraph (d)(1) of this section shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e) (1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(3) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method under paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed on that difference pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances, processing allowances, or other allowances determined pursuant to this subpart.

(i) (1) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(2) If the lessee incurs extraordinary costs prior to processing for the gathering, compression, dehydration, or sweetening of gas production subject to this section from frontier or deep-water areas, or from a gas production operation recognized by MMS as extraordinary, and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, the costs are associated with OCS leases located in water depths in excess of 400 meters, or the costs are associated with an extraordinary gas production operation which MMS approves as eligible for the provisions of this subsection; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS in a form and manner prescribed by MMS. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government, its beneficiaries, the Indian Tribes, or allottees, until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from the MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.154 Determination of quantities and qualities for computing royalties.

(a) (1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM or MMS for onshore and OCS leases, respectively.

(2) If the value of gas determined pursuant to § 206.152 of this subpart is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or MMS, that value shall be adjusted for the differences in quantity and/or quality.

(b) (1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 206.153 of this subpart is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this section, that value shall be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of

royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease shall be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal and Indian leases that is processed in the same plant.

(d) (1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and 30 CFR 202.151(c), royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this subpart, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.155 Accounting for comparison.

(a) Except as provided in paragraph (b) of this section, where the lessee (or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or without a contract) processes the lessee's gas and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of (1) the combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 206.153 of this subpart, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this subpart; or (2) the value, for royalty purposes, of the gas prior to processing determined in accordance with § 206.152 of this subpart.

(b) The requirement for accounting for comparison contained in the terms of leases, particularly Indian leases, will govern as provided in § 206.150(b) of this subpart. When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

§ 206.156 Transportation allowances—general.

(a) Where the value of gas has been determined pursuant to § 206.152 or § 206.153 of this subpart at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

(b) Transportation costs must be allocated individually among products produced and transported. However, no transportation deduction shall be allowed for products that are not royalty bearing.

(c)(1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 206.152 of this subpart, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the unprocessed gas determined in accordance with § 206.152 of this subpart.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 206.153 of this subpart the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the residue gas or gas plant product determined in accordance with § 206.153 of this subpart. For purposes of this section, natural gas liquids shall be considered one product.

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.157 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be

taken, the lessee must submit a completed page one of Form MMS–4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(2) If an arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs shall be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all products in the gaseous phase. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar per unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. Once a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in

service after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c) of this section).

(3) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported shall be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all products in the gaseous phase. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee begins the transportation, whichever is later, unless MMS approves a longer period. The MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS may grant the exception only if: (i) The lessee has arm's-length contracts for transportation of other production through the same transportation system; and (ii) The lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission; and (iii) At least 50 percent of the gas transported annually through the lessee's transportation system is transported pursuant to arm's-length transportation contracts. If the MMS grants the exception, the lessee shall use as its transportation allowance the volume-weighted average prices charged other persons pursuant to arm's-length contracts for transportation through the same transportation system.

(c) *Reporting requirements*— (1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4295 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4295 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS–4295 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4295 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4295 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4295 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4295 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish in appropriate circumstances, reporting

requirements which are different from the requirements of this section.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due, plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated transportation allowance is less than the allowance based on actual costs, the refund procedure will be specified by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts no cost shall be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.158 Processing allowance—general.

(a) Where the value of gas is determined pursuant to § 206.153 of this subpart, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) shall be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas MMS may designate an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product shall not exceed 66⅔ percent of the value of each gas plant product determined in accordance with § 206.153 of this subpart (such value to be reduced first for any transportation allowances related to post-processing transportation authorized by § 206.156 of this subpart and any extraordinary cost allowances authorized by § 206.153(i) of this subpart).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation for MMS to make a determination. Under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing lease production which is not royalty bearing.

(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.159 Determination of processing allowances.

(a) *Arm's-length processing contracts.* (1)(i) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period

upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the processor for the processing. If the contract reflects more than the total consideration, then the MMS may require that the processing allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the processing allowance be determined in accordance with paragraph (b) of this section.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a processing allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee's payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent processing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. The MMS may grant the

exception only if: (i) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts;

If the MMS grants the exception, the lessee shall use as its processing allowance the volume weighted average prices charged other persons pursuant to arm's-length contracts for processing at the same plant.

(c) *Reporting requirements.*—(1) *Arm's-length contracts.* (i) With the exception of those processing allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4109 prior to the time, or at the same time as, the processing allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4109 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period.

(iv) The MMS may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Processing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purpose of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations became effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.* (i) With the exception of those processing allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the processing under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4109 containing the actual costs for the previous reporting period. If gas processing is continuing, the lessee shall include on Form MMS–4109 its estimated costs for the next calendar year. The estimated gas processing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4109 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new processing plants, the lessee's initial Form MMS–4109 shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(v) Processing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate for gas production from onshore Federal and Indian leases. For gas production from OCS leases such allowances will be allowed to continue until they terminate or until the end of the calendar year, whichever is earlier. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4109. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) The MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual gas processing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due-plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs,

together with any payment, in accordance with instructions provided by MMS.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS-2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by MMS.

(f) *Other processing cost determinations.* The provisions of this section shall apply to determine processing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of processing costs.

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Federal Register

Friday
October 23, 1987

Part IV

Department of the Interior

Minerals Management Service
Bureau of Land Management

30 CFR Parts 202, 203, 206, 207, 210, and 241
43 CFR Part 3160
Revision of Oil Product Valuation Regulations and Related Topics; Second Further Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service and Bureau of Land Management, Interior.

ACTION: Second further notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) of the Department of the Interior (DOI) is issuing this Second Further Notice of Proposed Rulemaking to obtain additional public review and comments on its oil product valuation regulations applicable to production from Federal and Indian oil and gas leases. Attached to this notice as an appendix is a draft of the oil valuation regulations in final form, together with a draft of the preamble for the final rule.

DATE: Comments must be received on or before November 23, 1987.

ADDRESSES: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On January 15, 1987, 52 FR 1858, MMS issued a notice of proposed rulemaking to amend the regulations governing the valuation of oil from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received over 100 written comments. In addition, public hearings were held in Denver, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987.

Because of the complexity of the regulations, and in accordance with MMS's understanding with the Congress, MMS issued a Further Notice of Proposed Rulemaking on August 17, 1987 (52 FR 30826) which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain additional public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* of June 27, 1987, pages H5651-H5666.

The public comment period on the first further notice of proposed rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, September 2, 1987). On September 21, 1987, MMS issued a Notice of Intent To Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where, necessary, to reach compromises.

As a result of the various meetings MMS held with interested groups and from MMS's review of the comments, changes have been made to the draft final regulations. Some of these changes are significant. Also, MMS still has some issues on which it would like further technical review and comments from interested persons before issuing a final rule. Therefore, MMS is issuing this Second Further Notice of Proposed Rulemaking with a revised draft final rule attached.

MMS requests that commenters not simply resubmit comments already provided on the proposed rules or in response to the first Further Notice of Proposed Rulemaking with the first draft final rule attached thereto. All comments received since publication of the first proposed rulemaking on January 15, 1987, will be included in this rulemaking record. Additional comments should be directed to the provisions of the draft final rule in the appendix. Commenters are requested to identify, by section, the provision of the draft final rule to which a comment is directed.

II. Specific Comments Requested

Commenters may comment on all issues concerning the draft final rules. However, there are certain questions on which MMS specifically would like comments.

In the draft final rules published August 17, 1987, MMS included certain extraordinary cost allowances related to production of oil. See § 206.102(i), draft final rule for oil (52 FR 30826). Although most industry commenters supported these provisions and even advocated liberalizing their application, many State and Indian commenters believed that these sections should be removed. Generally, these commenters stated that the costs included in these sections historically had not been allowed by MMS as costs necessary to place production in marketable condition and it was inappropriate to allow them now.

MMS has retained the section in the draft final rules attached hereto as an appendix. However, MMS still is uncertain whether this section should be retained in the final rules. Comments are specifically requested on this issue.

In the definition of "arm's-length contract" included in § 206.151 of the draft final rules, MMS states that "* * * contracts between relatives, either by blood or by marriage, are not arm's-length contracts." Some commenters thought that the term "relatives" needed to be limited because a distant relationship should not cause a contract to be considered not an arm's-length contract. MMS requests comments on whether some practical limit can be placed on the term "relative."

The Further Notice of Proposed Rulemaking of August 17, 1987 (52 FR 30826), specifically requested comments on certain broader issues, as follows:

Besides specific comments on the draft final rule. MMS also requests commenters to address whether or not there are additional requirements or approaches which would improve the royalty payment process. The MMS believes it has developed a set of rules which will lead to the proper payment of royalties, but given the interest and concerns raised by this rulemaking, MMS would like to learn of all approaches which will reduce underpayments and minimize any abuse in payment and collection of royalties. MMS would specifically like comments on the ability of auditors to determine compliance with these regulations. MMS also would like

commenters to address the extent to which these draft rules are responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office, and the Department's Office of Inspector General.

While MMS received many comments on provisions of the draft final rule which bear upon these broader issues, it did not receive any comments specifically addressing the issues themselves. However, MMS also received requests to extend the comment period to allow more time to prepare and submit comments on one or more of these issues. To emphasize its interest in these issues, MMS is again specifically asking for comment on these broader issues and believes that, overall, the time allowed from August 17, 1987, to the close of the current comment Period should be sufficient for that purpose.

MMS already received many comments on issues related to allowances for post-production costs and other similar issues. MMS would like further comment on allowances for post-production costs, particularly where oil is sold at the lease pursuant to an arm's-length contract and services, such as dewatering, are performed by the purchaser. Comments should address the frequency with which such situations occur.

With regard to transportation allowances, MMS would like further comment on the issue of allocating transportation costs among different products on a volume-versus-value basis, and the issue of whether costs may be allocated to nonroyalty-bearing products. Again, where available, comments should provide data on costs and frequency of occurrence.

III. Other Issues

The draft regulations refer to a form for transportation allowances (Form MMS–4110). Many commenters requested an opportunity to review the form while commenting on the rules. Copies of the form may be requested from MMS by submitting a request to the address listed in the **ADDRESS** section of this preamble.

In the draft final rules, there are many references to audits and the closing of audit periods. MMS intends to issue further guidelines on the closing of audit periods and how valuation determinations will be affected.

MMS also requests comments on whether common provisions of the oil and gas regulations, such as transportation allowances, should be combined to streamline the regulations. *See* the discussion in the Second Further Notice of Proposed Rulemaking for the gas valuation rules, published elsewhere in today's **Federal Register.**

IV. Procedural Matters

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian oil royalty valuation regulations; to clarify DOI oil royalty valuation policy; and to provide for consistent royalty valuation policy among all leasable minerals. Because the proposed rule principally consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities.

Lessee reporting requirements will be approximately $130,000. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments must be received by 4:30 p.m. of the day specified in the **DATE** section to the appropriate address indicated in the **ADDRESS** section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Oil Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room C406, Building 85, Denver Federal Center Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.105, 207.5 and 210.55 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 207

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral

royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: October 19, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

Appendix—Draft Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics

Agency: Minerals Management Service and Bureau of Land Management, Interior.

Action: [Draft] Final rule.

Summary: This rulemaking provides for the amendment and clarification of regulations governing valuation of oil for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing oil royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

Effective date: February 1, 1988 (tentative).

For further information contact: Dennis C. Whitcomb, Chief, Rules and Procedures, (303) 231-3432, (FTS) 326-3432.

Supplementary information: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Royalty Management Program, Minerals Management Service (MMS); Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On January 15, 1987, 52 FR 1858, the Minerals Management Service (MMS) of the Department of the Interior issued a notice of proposed rulemaking to amend the regulations governing the valuation of oil from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received over 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987. Sixteen persons made oral presentations at these hearings.

Because of the complexity of the regulations, and in accordance with MMS's understanding with Congress, MMS issued a Further Notice of Proposed Rulemaking on August 17, 1987 (52 FR 30826), which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* dated June 27, 1987, at pages H5651-H5666.

The public comment period on the First Further Notice of Proposed Rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, September 2, 1987). On September 21, 1987, MMS issued a Notice of Intent to Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where necessary, to reach compromises.

[Tentative: In a further effort to ensure that all of the interested constituencies had a full and fair opportunity to comment upon the gas valuation rules following the several meetings and MMS's review of the written comments, MMS issued a Second Further Notice of Proposed Rulemaking and second draft final rules (52 FR —— October —, 1987). Public comments were received for 30 days.]

MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee (RMAC), proposed rules, and further notices of proposed rulemaking with draft final rules. A complete account of the RMAC process is included in the preamble to the proposed regulations issued in January 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of oil from Federal and Indian leases. These regulations will apply prospectively to production on or after the effective date specified in the *Effective date* section of this preamble.

II. Purpose and Background

The MMS is revising the current regulations regarding the valuation of oil to accomplish the following:

1. Clarification and reorganization of the existing regulations at 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Part 3160.
2. Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).
3. Placement of the oil royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.
4. Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for lease production.
5. Creation of regulations to guide the lessee in the determination of allowable transportation costs for oil to aid in the calculation of proper royalty due the lessor.

Structurally, these regulations include the reorganization and redesignation of Parts 202, 203, 206, 207, and 210. Each part is reorganized by redesignating "Subpart B—Oil and Gas, General" as "Subpart B—Oil, Gas, and OCS Sulfur, General"; "Subpart C—Oil and Gas, Onshore" as "Subpart C—Federal and Indian Oil"; and "Subpart D—Oil, Gas, and Sulfur, Offshore" as "Subpart D—Federal and Indian Gas."

Also, a number of sections are renumbered and/or moved to a new subpart. In addition, §§ 202.51, 202.101, 206.103, 206.104, 207.1, 207.2, 207.5, and 210.55 are added to the appropriate subparts.

Current § 206.104 is an onshore operational regulation which is under the jurisdiction of the Bureau of Land Management (BLM). This section is being redesignated as 43 CFR 3162.7-4, and the existing § 3162.7-4 is being redesignated as § 3162.7-5.

This rule applies prospectively to production on or after the effective date specified in the *Effective date* section of this preamble. It supersedes all existing oil royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S.

Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations and Notice to Lessees (NTL's) issued over past years. Specific guidelines governing reporting requirements consistent with these new oil valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation Changes	Descriptions
I. REDESIGNATIONS	
1. Subparts E, F, and G of Part 241 are redesignated as Subparts F, G, and H, respectively.	This administrative action permits the insertion of a new Subpart E—"Solid Minerals, General" in this Part.
2. Sections 202.150, 202.151, and 202.152 are redesignated as §§ 202.100, 202.53, and 202.52, respectively.	This administrative action more appropriately locates within 30 CFR the information contained in these sections.
Section 203.150 is redesignated as § 203.50. Section 203.200 is redesignated as § 203.250.	
Sections 206.300 and 206.301 are redesignated as §§ 206.350 and 206.351, respectively.	
3. Section 206.104 is redesignated under Title 43 CFR as § 3162.7-4. Existing § 3162.7-4 is redesignated as § 3162.7-5.	This section addresses a BLM onshore operations issue which properly belongs in 43 CFR.
4. Sections 210.300 and 210.301 are redesignated as §§ 210.350 and 210.351, respectively.	This action corresponds to the redesignation of Subpart F as Subpart H.
5. Section 241.100 is redesignated as § 241.53	This action is the result of retitling of the subparts.
II. DELETIONS	
1. Subpart H—"Indian Lands" is removed from Part 241	Oil royalty valuation for Indian Lands is now covered by Subpart C—Federal and Indian Oil.
2. Sections 202.100 through 202.103 are removed from Subpart C of Part 202.	These sections cover activities now governed by BLM.
3. Section 203.100 is removed from Subpart C	This section covers an activity now governed by BLM operations personnel.
4. Section 206.103 is removed from Subpart C of Part 206	This section has been rewritten and relocated in the regulations as Subparts C and D of Part 206.
5. Sections 207.1, 207.2, 207.5, 207.6 and 207.7 are removed from Subpart A of Part 207.	The subject matter of these Sections is addressed elsewhere in the regulations. They are, therefore, redundant and have been removed to avoid confusion.
6. Sections 210.100 through 210.105, §§ 210.150 and 210.151 are removed from Subpart C and D, respectively, of Part 210.	These requirements of §§ 210.100 and 210.101 are now covered by Part 207, as amended. Sections 210.102, 210.103 and 210.104 are no longer applicable (these forms are no longer in use). § 210.105 has been replaced by new § 210.55.
7. Section 210.10 in Subpart A is removed and reserved and paragraph (c) of 241.60, formerly § 241.100(c), is removed from Subpart B of Part 241.	Newly redesignated § 241.60(c)(1) and § 210.10 are no longer applicable (these forms are no longer in use).
III. ADDITIONS	
The following subparts are added to Part 207	Separate subparts have been added to Part 207 to make it consistent with other parts of 30 CFR Chapter II and to provide both structure and space for future expansion of this portion of the regulations.
Subpart A—General Provisions	
Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]	
Subpart C—Federal and Indian Oil [Reserved]	
Subpart D—Federal and Indian Gas [Reserved]	
Subpart E—Solid Minerals, General [Reserved]	
Subpart F—Coal [Reserved]	
Subpart G—Other Solid Minerals [Reserved]	
Subpart H—Geothermal Resources [Reserved]	
Subpart I—OCS Sulfur [Reserved]	
2. The following subpart is added to Part 210	This new subpart provides space for regulations of general applicability to geothermal resources.
Subpart H—Geothermal Resources [Reserved]	
3. The following subpart is added to Parts 202, 203, 206, and 210	This new subpart provides space for regulations of general applicability to OCS sulfur.
Subpart I—OCS Sulfur [Reserved]	
4. The following subparts are added to Part 241	These new subparts provide space for future regulations of general applicability to solid minerals and OCS sulfur.
Subpart E—Solid Minerals, General [Reserved]	
Subpart I—OCS Sulfur [Reserved]	
5. Sections 202.51 and 202.101 are added to Part 202. Sections 206.103 and 206.104 are added to Part 206.	These new sections provide oil valuation standards and procedures.
6. Sections 207.1, 207.2, and 207.5 are added to Part 207	These new sections reference the definitions in Part 206 and set forth certain recordkeeping requirements.
7. Section 210.55 is added to Part 210	This will replace § 210.105.
IV. AMENDMENTS	
1. Parts 202, 203, 206, 210, and 241 are amended by retitling the following subparts:	These subparts have been retitled in order to organize them by a commodity (oil vs. gas, etc.) rather than emphasizing location (onshore vs. offshore) as was done formerly.
Subpart B retitled "Oil Gas, and OCS Sulfur, General	
Subpart C retitled "Federal and Indian Oil	
Subpart D retitled "Federal and Indian Gas [Reserved]"	

Regulation Changes	Descriptions
2. Parts 202, 203, and 206 are amended by retitling the following subparts:	
Subpart E retitled "Solid Minerals, General—[Reserved]"	
Subpart F retitled "Coal [Reserved]"	
Subpart G retitled "Other Solid Minerals—[Reserved]"	
Subpart H retitled "Geothermal Resources—[Reserved]"	

The rules in § 206.100 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting any Indian lease, are inconsistent with the regulations, then the lease, statute, or treaty will govern to the extent of the inconsistency. The same principle applies to Federal leases.

A separate oil definitions section applicable to the royalty valuation of oil is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241. Because the definitions are specific to these parts, they may not necessarily conform to definitions of the same terms in other Federal agencies' regulations.

III. Response to General Comments Received on Proposed Oil Product Valuation Regulations and Related Topics

The notice of proposed oil valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1858). This was followed by a Further Notice of Proposed Rulemaking (52 FR 30826, August 17, 1987), and a Second Further Notice of Proposed Rulemaking (52 FR ——, ——, 1987). Over 130 comments were received from interested persons including Indian lessors, the States, and industry.

The commenters included industry/trade groups, State, local, and Federal governmental entities, Indian Tribes or allottees, a State/Tribal association, and an individual.

General Comments

The MMS received many diverse comments on the principles underlying the proposed valuation methodology. These comments did not address specific sections of the proposed regulations. The respondents generally comprised two groups, with industry generally on one side and States and Indians on the opposing side. The general comments were categorized into five more-or-less interrelated issues: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts.

(1) Acceptance of Gross Proceeds as the Value for Royalty Purposes

Industry commenters generally agreed that the basic premise underlying the proposed rulemaking is sound because value is best determined by the interaction of competing market forces. However, State and Indian commenters disagreed, particularly objecting to the concept of accepting gross proceeds received under arm's-length transactions as representative of market value. The commenters were concerned that the acceptance of gross proceeds, without additional testing of its validity, could lead to manipulation of pricing schedules, an erosion of payors' accountability and, in general, would fail to protect the interests of the lessor. Many pointed out that gross proceeds has historically not been considered equivalent to market value, citing various legal opinions in support. In view of this, State and Indian commenters declared that royalty value should be equivalent to the highest price posted for like-quality production in a field or area.

MMS Response: The MMS's experience demonstrates that the highest price posted in a given field does not necessarily reflect a bona fide offer to purchase, nor does it reflect that significant quantities of oil are being purchased at that price. In these regulations, MMS generally will assess royalty on the value to which the lessee is legally entitled under its arm's-length contract. MMS maintains that gross proceeds to which a lessee is legally entitled under arm's-length contracts are determined by market forces and thus represent the best measure of market value. For many Indian leases, MMS will also require consideration of the highest price paid for a major portion of production in accordance with the lease terms.

To assure that gross proceeds represent market value, and thus insure accountability, Indian and State commenters suggested that reported gross proceeds values should be tested/validated by using the net-back (workback) procedure as an independent cross-check. They also suggested that royalty reporting should be routinely monitored by using this procedure.

MMS Response: The MMS believes that gross proceeds under arm's-length contracts are representative of market value. However, MMS will continue to monitor value determinations under its regulations to ensure that those determinations yield reasonable values. To routinely perform labor-intensive net-back calculations is impractical.

Some State respondents doubted that the benchmark hierarchy system for determining values under non-arm's-length transactions could be properly applied because of the system's complexity and because the valuation procedure is predicated upon a payor's ability and willingness to identify a transaction as either arm's-length or non-arm's-length. They feared that industry might be reluctant to identify non-arm's-length transactions and thus merely declare gross proceeds as value, thereby placing the burden of proper finding upon MMS during audit.

MMS Response: The MMS supports the benchmark system. Most of industry, those who report under the system, believe it to be a workable system. In general, industry can identify its own arm's-length contracts based on standards established in these regulations and it is in its best interests not to classify non-arm's-length transactions as arm's-length because of the threat of both high interest costs and possible penalties. However, MMS will use the audit process to verify that contracts which are claimed to be arm's-length satisfy all the standards of the definition, discussed in detail below.

(2) Deduction of Transportations Costs

Although industry commenters supported the proposed deductions for transportation costs, many of the respondents believed the allowable deductions were too restrictive, and one suggested that transportation allowances should be actual costs based on Federal Energy Regulatory Commission (FERC) tariffs or arm's-length transportation arrangements.

However, comments from States and Indians objected to the allowances as being too liberal and unnecessarily open-ended by effectively granting the allowances regardless of need. They suggested that transportation deductions should be allowed only when transportation costs are necessary to the sale of the production, that transportation allowances should be limited to OCS production only, or that no deductions should be allowed, at least for tribal lands.

MMS Response: The MMS believes that costs incurred by a lessee to transport lease production to a delivery point off the lease increases its value and, therefore, is a recognized deduction. See the transportation allowance section of this preamble for further discussion.

(3) Legal Mandates and Responsibilities Toward Indians

Some State and Indian respondents questioned the legality of the proposed rulemaking, expressing their view that the proposed modifications, particularly with respect to arm's-length contracts and gross proceeds, are contrary to the intent of the valuation requirements of the Mineral Lands Leasing Act, 30 U.S.C. 181 et seq., and the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 et seq., and are a marked departure from historical valuation regulations and lease terms. Their basic argument is that the statutes require royalty based on the value of production, and a royalty clause based upon "value" is not satisfied by a valuation procedure based upon gross proceeds; in their opinion, value may be considerably higher than revenues from arm's-length transactions.

MMS Response: The regulations generally define value on the basis of market transactions, consistent with commonly held economic philosophy, rather than some arbitrary "value" which can be easily misconstrued, disputed, or misinterpreted. The MMS believes there is no conflict between the intent of the Mineral Lands Leasing Act, FOGRMA, and the valuation procedures being adopted herein.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning." *Andrews v. Commissioner of Internal Revenue,* 135 F.2d 314, 317 (2nd Cir. 1943). The word "value" has sometimes been modified by the words "fair market", although the mineral leasing law provisions on "value of production" do not include these words. But these adjectives do not really clarify the word "value." The word "fair" can modify the word "value" as in "fair value" or it can modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term "fair market value," however, has been generally accepted to be the price received by a willing and knowledgeable seller not obligated to sell from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purpose of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system in which individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions which are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of these regulations is to define the value of production, for royalty purposes, for production from Federal and Indian lands. Value can be determined in different ways, and these rules explain how value is to be established in different circumstances. Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to "arm's-length contracts," in many instances, are accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area who have opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

The Indian commenters took particular exception to the proposed rulemaking, pointing out that the proposed valuation procedures based on gross proceeds are in conflict with the Secretary's duty under the Unallotted Indian Leasing Act of 1938 and the Indian Mineral Development Act of 1982 to ensure that tribes and allottees receive the maximum return for their property. They disagreed that gross proceeds represented market value, and thus believed they would not receive the maximum benefit accruable from production pursuant to statutes. One respondent suggested that the proposed regulations apply prospectively only to newly issued leases so that royalties owed to Tribes and allottees under existing regulations would not be diminished.

MMS Response: MMS believes the new valuation regulations, with the changes discussed in more detail below, are fully consistent with the Secretary's obligations to Indian lessors.

(4) Complexity and Obscurity of Regulations and Definitions

Some commenters believed that the proposed rulemaking generally was excessively complicated, leading to difficulty in interpretation. As a result, they believe the proposed rules fail to achieve the stated goals of simplification and providing certainty.

MMS Response: The MMS has endeavored to correct certain identified deficiencies in the final rulemaking. The regulations combine previous regulations, NTL's, orders, and internal policies. They will provide a single source for product value guidance which necessarily will be simpler and more comprehensive than the existing procedures.

(5) Economic Impacts

State and Indian commenters disagreed with MMS's statement that the proposed regulations would yield long-term benefits to royalty owners. Indian commenters, in particular, believed the proposed valuation rules would have a significant detrimental economic impact on Tribes and allottees. A detailed analysis of the economic impacts of the proposed rules was suggested by one commenter to support MMS's claim that the short-term effects on revenues would be limited.

MMS Response: The MMS believes that the regulations provide valuation criteria that will result in reasonable values and will create an atmosphere of certainty in royalty payments and thereby correct some of the royalty deficiencies encountered in the past.

IV. Section-by-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if any of those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 1858, January 15, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.52 Royalties.

For purposes of clarity, one State commenter suggested that the word "royalty" be inserted before the words "rate specified", and the words "amount of royalty" be deleted and replaced with the words "royalty rate." This suggestion was made because some lessees have confused the computation of royalty rate and the computation of the amount of royalties due.

MMS Response: The MMS agrees that these suggested changes should be made for purposes of clarity and the final rule has been modified accordingly.

The MMS has removed from the final rules the two sections addressing the general responsibilities of MMS and lessees. All of these responsibilities are addressed in various provisions of 30 CFR and elsewhere. Thus, these sections were duplicative and, based on the comments received, caused confusion.

Section 202.100 Royalty on oil.

Indian commenters recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in-kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment in-kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty in-kind. However, because requests to take royalty in-kind may involve operational difficulties for the lessee, as well as a change in accounting and reporting procedures necessary for MMS to properly monitor royalty obligations, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty in-kind, he or she must contact MMS. The MMS then will make arrangements with the lessee for the in-kind payment.

The MMS also has added a provision clarifying that when royalties are paid in value, the royalties due are equal to the value for royalty purposes multiplied by the royalty rate.

Industry commenters recommended that this section state that no permission is necessary to exempt from royalty any oil used for the benefit of the lease, either on-lease or off-lease, and including communitized or unitized areas. In addition, another industry commenter stated that where agency approval is necessary, this section should address the procedure to acquire such permission.

Some Indian commenters also recommended that any royalty-free use of oil be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty free operations.

MMS Response: The royalty-free use of oil is an operational matter covered by the appropriate operating regulations of the BLM and MMS for onshore and OCS operations, respectively. The BLM requirements are governed by the provisions of Notice to Lessees and Operators No. 4A. Therefore, although these comments raised many substantive issues, they are not properly addressed in this rulemaking. The MMS does not believe that prior approval for royalty-free use of oil is warranted because most leases by their specific terms allow royalty-free use of gas and it is a matter which will be reviewed during audits to prevent abuse.

One industry commenter proposed that MMS consider expansion of § 202.100(b) to include appropriate royalty deductions for the oil equivalent cost of alternative fuels which may also be used for beneficial purposes on the lease.

MMS Response: This suggestion was not adopted. This issue is more properly directed to operational regulations, not value regulations, and is outside the scope of this rule. The MMS has included these provisions simply to reflect the general lease terms and regulatory provisions which prescribe the royalty obligation.

Proposed § 202.100(b), which addressed royalty-free use of oil for leases committed to unit or communitization agreements, has been expanded in the final rules to also cover production facilities handling production from more than one lease with the approval of the appropriate agency. Although MMS is satisfied that this issue is an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement and BLM's and MMS's regulations, the number of comments received regarding this issue led MMS to believe that reiterating these operational requirements was advisable. This regulation simply provides that a disproportionate share of the fuel consumed at a production facility serving multiple leases may not be allocated to an individual lease without incurring a royalty obligation on a portion of the fuel.

A State commenter suggested changes designed to help end the confusion about the distinction between computing the royalty rate and computing the amount of royalties due. MMS has adopted some changes to the wording of §§ 202.100 (a) and (b) for clarity.

Section 202.100(c) was proposed as § 206.100(d). A comment was received from industry suggesting the addition of the phrase "because of negligence of lessee" after the words "offshore lease," in order to be consistent with section 308 of FOGRMA.

MMS Response: This subpart addresses the valuation of oil which has been determined to be "avoidably lost," not the reason(s) for that determination. Determination of "avoidably lost" and "negligence" is a function of MMS OCS Operations for OCS leases and BLM for onshore Federal and Indian leases. The BLM's requirements are governed by the provisions of Notice to Lessees and Operators No. 4A. The MMS's requirements are governed by OCS Order No. 11. The addition of the recommended phrase, therefore, is considered inappropriate for inclusion in this rulemaking.

Section 202.100(d) requires royalties to be paid on insurance compensation for unavoidably lost oil. Several industry commenters stated that to require a lessee to pay royalties on any compensation received through insurance coverage or other arrangements for oil unavoidably lost is unfair. They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

MMS removed the insurance compensation section from the first draft final rule. Many Indian and State commenters thought this change was unfair, stating that if the lessee was compensated for the production, the lessor should then receive its royalty share.

MMS Response: The MMS has reinstated this provision in the final rules. However, royalties are due only if

the lessee receives insurance compensation from a third person. No royalty is due where the lessee self-insures.

MMS has added at § 202.100(e) of the final rules a provision concerning production governed by a federally approved unitization or communitization agreement. Section 202.100(e) states that all agreement production attributable to a Federal or Indian lease in accordance with the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Most important, however, § 202.100(e) requires that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. By way of illustration, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, then it will be sold or otherwise disposed of by one of the other unit participants. If one of the unit participants other than the Federal lessee transports the oil to a terminal off the unit area under an arm's-length transportation agreement and then sells the oil under an arm's-length sales contract, the value, for royalty purposes, will be that person's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what person must report and pay the royalties, it only addresses the issue of valuation.

Section 206.100 Purpose and scope.

One industry commenter agreed with the concept that Indian Tribal and allotted leases be treated under the same oil valuation standards applied to Federal leases unless the specific lease terms require otherwise. That commenter also suggested that MMS support Indian Tribes and allottees, if requested, in marketing their royalty share of production. An Indian Tribe commenter asserted that it may be inconsistent to use the same oil valuation standards for Indian and Federal leases: "Because of the trust responsibility of the United States to maximize Indian royalties, it may be inconsistent to have Indian and Federal leases treated the same under this section, especially if the policy of Interior is to earn a reasonable and long-term maximum rate of return and revenues for all parties."

MMS Response: The MMS believes generally that maintaining a single set of oil valuation regulations that apply to both Federal and Indian lands (except leases on the Osage Indian Reservation) provides for consistency and certainty in the determination of the value of oil for all lands administered by the DOI and will result in obtaining a reasonable and appropriate rate of return to all parties concerned. However, because of the lease terms of many Indian leases, MMS has included in the rules some additional valuation standards applicable only to those Indian leases.

MMS has added a general statement that the purpose of these rules is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

In accordance with paragraph (b) of this section, where the provisions of any statute, treaty, or lease are inconsistent with these regulations, the lease, statute, or treaty provision will govern to the extent of that inconsistency. This policy also applies to court decisions—regulatory revisions will be required to the extent of any inconsistency with the existing regulations, provided they are not ambiguous or unclear in their intent. Thus, MMS maintains the DOI's responsibility to Indians by assuring that the regulations do not supersede the authority granted by the lease, or violate provisions of a statute, treaty, or court decision.

Several Indian respondents commented on § 206.100(b). One suggested that the proposed rules should expressly recognize that "where provisions of any Indian lease, or any statue or treaty affecting Indian leases, as stated or *as interpreted by the courts,* are inconsistent with the regulations, then the lease, statute or treaty, or *court interpretation* would govern to the extent of the inconsistency."

Another commenter expressed the view that "caution should be exercised before stating that 'the lease * * * provision shall govern to the extent of that inconsistency.' Many Indian allottee and tribal leases are very old and were entered into when industry practices were very different than they are now. The parties to the lease may have understood the lease to incorporate standard industry practice at that time. For this reason, some provisions may have been omitted from the written instrument. It may be proper to interpret some of those unwritten provisions in light of today's standards, but it may be grossly unfair to the royalty owner to so interpret others. One such example may be transportation costs. If transportation costs were not being deducted from royalties when the lease was entered into, transportation costs should not be deducted now, even though not mentioned in the lease. It is our conclusion that this should be considered and the regulations should make some mention of this consideration." Another commenter suggested including settlement agreements entered into to resolve administrative or judicial litigation because these agreements may vary from the rules.

MMS Response: Obviously, MMS will comply with court orders and judicial decisions which affect these regulations. It is well known, however, that court decisions often focus only on parts of issues, leaving those decisions open to interpretation. Furthermore, a court's jurisdiction can limit the applicability of its decision. It is for these reasons that MMS has elected not to include an express reference to court decisions or court interpretations in this or any other subpart of these regulations.

Contrary to the interpretation of this section by the second commenter, the regulations will not change any specific lease provisions. The MMS has included the suggested reference to settlement agreements.

Few comments were received concerning § 206.100(c). One from industry endorsed the recommendation of the Royalty Management Advisory Committee (RMAC) Oil Valuation Panel which proposes placing a limit on the time period during which MMS may conduct an audit on a lease. It asserted that such a limitation "encourages prompt action, assures the retention of appropriate records, and gives the lessee assurance that its current business will not be disrupted by examinations of very remote payments. We believe a 6-year limitation is reasonable for both MMS and the lessee."

The Indian respondent is concerned that "Although all royalty payments made to MMS will purportedly be subject to later audit and adjustment, MMS's past audit record does not reassure the tribes that all royalties due will be collected."

MMS Response: These regulations concern valuation procedures, not accounting functions. All MMS audits are subject to the requirements found at 30 CFR 217.50, which does not specify any time limit during which MMS may conduct an audit. Because the reference in § 206.100(c) is intended only to be a general reminder that royalty payments will be audited, the recommendation to place a time limit on audits was not adopted. The MMS has modified the provision in the final rule to make it

clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases. MMS will address the issue of audit closure elsewhere.

Several Indian commenters suggested that MMS should amend § 206.100(d) to specifically refer to the Secretary's trust responsibility to the Indians.

MMS Response: The MMS has made the suggested change.

The MMS received a comment from an Alaska Native Corporation stating that MMS should not make the new regulations applicable to an Alaska Native Corporation's proportionate share of leases acquired under section 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1613(g). Under section 14(g), a native corporation can acquire all or part of the lease. The commenter's point was that at the time a proportionate interest in a lease is acquired, the native corporation had an expectation of what royalties it would receive, and it would be inequitable for MMS to modify that expectation for leases or portions of leases which MMS does not even own.

MMS Response: MMS agrees with the comment. Therefore, regulations, guidelines, and Notices of Lessees in effect on the date that an Alaska Native Corporation acquired any proportionate interest in a lease will continue to apply to that interest.

Section 206.101 Definitions.

Allowance—Comments were received on this paragraph from State entities, Indian Tribes, and a Federal agency. One State commenter pointed out that this definition appears to be inconsistent with the sections of the valuation regulations dealing with transportation allowances (§§ 206.104 and 206.105). The word "allowance" is defined in terms of being "authorized," "accepted" or "approved," whereas the regulations state that a transportation "allowance" can be deducted without prior approval. Their concern is that the definition should match the usage in the regulations. An Indian commenter stated that the definition should "clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary.*" A Federal agency comment stated that the definition is too liberal and would result in the Federal Government subsidizing oil companies' operation costs. They cited an example where a transportation allowance of as much as 50 percent could be granted for moving oil in lateral lines to off-lease measurement points; specifically, from wellheads to a Lease Automatic Custody Transfer (LACT) unit. One State commenter suggested that the definition is unnecessarily broad and recommended deleting the language "or an MMS-accepted or approved" as well as deleting the phrase "to a point of sale or point of delivery remote from the lease." This commenter also suggested adding the words "necessary and" before the word "reasonable." The rationale for making these changes is that there are other sections of the regulations that clarify "that MMS need not provide advance approval before a lessee could take an allowance." The "accepted or approved" language could be interpreted to suggest that "allowances are not subject to later adjustments by MMS after full audit, based on arguments that the allowance was accepted by MMS after receipt of the actual costs report under § 206.105(b)(2), or accepted under the terms of the regulations."

MMS Response: These regulations, in effect, "authorize" the lessees to deduct certain costs incurred for transportation from the value without prior approval. (See §§ 206.104 and 206.105.) Allowances computed by the lessee shall be "accepted" by MMS subject to review and/or audit. The MMS has not included a definition of the phrase "remote from the lease" in the final rules. To eliminate any confusion, MMS has replaced this phrase with the phrase "off the lease." Thus, transportation off the lease, other than gathering, is subject to an allowance. The MMS has included an express statement in the final rule that transportation allowances do not apply to gathering costs.

Area—A comment was received from industry addressing this definition as being imprecise and in need of specified limits in order to define how large an "area" can be. In addition, the commenter proposed that the definition should be clarified by inserting the phrase "or producing unit" after "oil and/or gas field."

MMS Response: The definition seeks to encompass a concept that is very difficult to describe. Narrowing its scope by describing it in terms of size will only establish an arbitrary basis for the definition. To avoid this, MMS elected to retain the definition as proposed.

Arm's-length contract—A large number of comments were received on this definition from industry, Indians, a State/Tribal association, States, and a Federal agency. The proposed definition of "arm's-length contract" generated a significant number of comments because it is, as one commenter noted, the "* * * linchpin of the benchmark system * * *." Because of the importance of this concept, it is not surprising that several commenters disagreed with the definition, either in part or in its entirety. Indeed, one State commenter described the reliance on the concept of "arm's-length" as a method of determining value to be "both inefficient and inappropriate" and suggested deleting the definition altogether. The majority of commenters, however, focused on what they considered to be flaws in the proposed definition and the specific recommendations they considered necessary to conclusively address those flaws.

One Indian commenter suggested that the basic flaw in the definition is the assumption that the interests of the lessee and the lessor are identical. This commenter pointed out that the courts "have recognized that the interests of lessees and lessors often diverge. See, e.g., *Piney Woods Country Life School* v. *Shell Oil Company*, 726 F.2d 225 (5th Cir. 1984), *cert. denied.*, 105 S. Ct. 1868, (1985), *Amoco Production Company* v. *Alexander*, 622 S.W. 2d 563, (Tex. 1981)." Another State commenter described the definition as "clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties." The assumption that arm's-length contract prices reflect market value "ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price oil below its value. especially if the benefit of the reduced royalty burden can be shared by means of the oil sales contract." This commenter believed that the lessee's and lessor's interests may not be the same, and that the royalties due lessors is viewed by many lessees as a cost to be minimized, not maximized. Another comment submitted by the State/Tribal association cited the following as an example of a situation where, although the parties are unaffiliated, the market value may be less than the arm's-length contract price: "Thus, for example, the price received by a lessee/producer who is a captive shipper of a single purchaser pipeline, albeit unaffiliated, will be accepted as the value, despite the fact that competing market forces are not operating. Even if audit revealed facts that would indicate that the sales price is suspect, the government would be bound under the proposed regulations to accept it if the parties were nominally unaffiliated. The MMS proposal would even foreclose the use of standard price checks, presently used * * * in * * * audit efforts, to assure that contract

proceeds represent the statutory requirement of fair market value of production." One State commenter concluded that in its attempt to establish an "almost purely objective" test and provide for certainty in valuation, MMS has inadequately tried to justify "giving away the power to prevent manipulation of the public's royalties." Other State and Indian commenters claimed that the proposed definition, although it may be objective, remains "unworkable" mainly because it does not include any reference to "adverse economic interests" and "free and open market" nor would it serve as an effective audit tool. They urge MMS to use the definition first proposed by MMS to the RMAC because "that definition incorporates the common legal understanding of the term arm's-length—the existence of unaffiliated willing buyers and willing sellers of adverse economic interests operating in a free and open market—and is the only definition that can assure against valuation becoming an industry 'honor system.' "

One State commenter stressed that even though the inclusion of additional criteria ("adverse economic interest" and "free and open market") would increase subjectivity, "the appeals process is in place to provide protection against arbitrary decisions." State and Indian commenters specifically recommended that the proposed definition be replaced by the one proposed to RMAC by MMS in the draft regulations.

That definition reads as follows:

> Arm's-length contract means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interests not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

One Indian Tribal commenter suggested that "MMS should derive a definition of oil value for royalty purposes (instead of what they consider would be a necessary, all-inclusive, lengthy definition of arm's-length contract) which is simple and which represents the true value of the production. The [commenter] submits that such a definition must be based on the highest price paid or posted for similar oil in the same field or area." Another commenter stressed that the definition limits the discretion of the Secretary to select whatever method he/she considers appropriate to determine the value of oil for royalty purposes.

A large number of industry commenters agreed that the definition of an "arm's-length contract" as "a contract or agreement between independent and nonaffiliated persons" is sound and appropriate. However, these same commenters (plus some Indian and State commenters) objected to the phrase in the proposed definition "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" as being too "restrictive." [1] The rationale for this position is that the phrase appears to defeat MMS's intent to use arm's-length contracts as the principal valuation method. Many industry commenters addressed the need to clarify the definition in order to insure that joint ventures, joint operating agreements, tax partnerships, and other relationships where the "interest" of one party in another is not one of beneficial control, are specifically excluded. As one of these commenters put it: "Similarly, involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to joint venture in the definition of person, which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas. Such joint operations are often mandated and/or approved and sanctioned by the various governmental agencies having jurisdiction and supervision over the operations (i.e., communitization, unitization, and development plans; and joint bidding agreements). They do not establish joint marketing rights, or otherwise erode the competitive desire of each owner to achieve maximum value for its share of production."

[1] Several commenters used the word "restrictive" to mean that the language in the proposed definition regarding "if one person owns an interest (regardless of how small), either directly or indirectly, in another person" significantly restricts the number of situations where an arm's-length contract would actually exist. A few comments espoused this same position, yet they termed the definition as too "broad." As used in this discussion, MMS considers the word "restrictive" to represent the above-mentioned position, and the word "broad" to denote that the language of the definition is either too vague or not restrictive enough.

Several industry commenters also complained that the ownership by one party of one share of stock in another party would confer affiliated or non-arm's-length status to virtually all otherwise arm's-length transactions between the two parties. They further stated that this would be true even if the pension plan of one party holds one share of stock in the other party. One Indian commenter suggested that MMS would waste its efforts trying to determine ownership interest: "There is also a problem with using ownership interest 'regardless of how small' in the definition. There is no definition in the proposed regulations of 'owns an interest.' Would the ownership of one share of stock be considered owning an interest? Parameters must be set and adhered to. When MMS starts trying to determine ownership interests no matter how small, an endless quagmire will develop, and time and resources will be devoted to this determination when they would be better spent on MMS's other duties."

Another industry commenter pointed out that the proposed definition is inconsistent with the guidelines concerning beneficial control under generally accepted accounting principles, while a number of other industry commenters claimed that it eliminates certainty in valuation.

The majority of all the comments stress the need to replace the phrase "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" with a statement that specifies quantifiable limits that would be used to determine whether or not one party would be considered to have a controlling interest in another party. Nearly all of these comments recommended that MMS adopt the following language for the definition of control which has already been implemented by BLM as codified at 43 CFR 3400.0-5(rr)(3) (51 FR 43910, December 5, 1986):

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

A few industry commenters recommended replacing the word "person" with the word "party" in the definition of arm's-length contract because they foresee that the use of the word "person" will "unnecessarily

preclude contracts between joint ventures from qualifying as arm's-length." Similarly, one industry commenter suggested deleting the words "consortium" and "joint venture" from the definition for "person" ("party") for the same reason.

Finally, one industry commenter objected to "the implicit and explicit presumption throughout the Oil Proposal that proceeds actually received through affiliated sales are less than fair value. This presumption places an unfair, impractical, and impossible standard on a producer who, acting in its best economic interest, elects to sell to an affiliated entity. In this regard, a redefinition of the term "Arm's-Length Contract" is recommended to eliminate reference to and inclusion of de minimis relationships."

Based on the numerous comments concerning the originally proposed definition, MMS included in the first draft final rule a definition which adopted the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3). In response to those commenters who believed that parties to an arm's-length contract must have adverse economic interests, MMS included in the first draft final rule definition a provision which requires that to be arm's-length a contract must reflect the total consideration actually transferred from the buyer to the seller, either directly or indirectly. For example, if the parties to the contract agreed that the price for oil from a Federal or Indian lease will be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS would not treat that contract as arm's-length.

Many of the comments on the first draft final rule again focused on the definition of arm's-length contract. Most of the industry commenters felt that the reference to "reflects the total consideration actually transferred directly or indirectly from the buyer to the seller" did not belong in the definition of arm's-length contract. Rather, they stated that it properly should be dealt with as a "gross proceeds" issue. The States and Indians commented that a reference to adverse economic interests still was necessary. They also felt that there must be a requirement of a free and open market. Finally, the States and Indians thought that MMS should lower the control threshold to 10 percent and that MMS should have more flexibility to rebut presumptions of noncontrol. Many of these commenters also thought that the rules should state that the lessee has the burden of demonstrating that its contract is arm's-length.

MMS Response: MMS has adopted many of the suggested changes to the definition. MMS agrees that the "total consideration" issue is properly a gross proceeds matter that does not reflect the affiliation of the parties. Thus, that phrase has been deleted from the arm's-length contract definition and the matter dealt with under the definition of "gross proceeds". MMS did not adopt the concept of "free and open market" since that concept is highly subjective. However, MMS did include a requirement that the contract be arrived at "in the marketplace" in support of the concept that an arm's-length contract must be between non-affiliated persons. Also, in furtherance of that concept, MMS included a provision that an arm's-length contract must be between persons with opposing economic interests regarding that contract which means that the parties are acting in their economic self-interest. Thus, while the parties may have common interests elsewhere, their interests must be opposing with respect to the contract in issue. The MMS has not reduced the control threshold to 10 percent, although it should be understood that MMS can rebut presumptions of noncontrol between 0 and 20 percent.

Many commenters felt that MMS's inclusion of joint venture in the definition of "person" improperly narrowed the definition of arm's-length contract. These commenters have misconstrued MMS's intent. The definition of "person" includes joint ventures since there are instances where joint ventures are established as separate entities. In those situations, if a party with a controlling interest in the joint venture buys production from the joint venture entity, that contract is non-arm's-length. However, MMS is aware that it also is common for companies to jointly contribute resources to develop a lease and then share the production proportionately. In a situation where four totally unaffiliated companies share the production, if one of the companies buys all of the production from the other three, those three contracts would be considered arm's-length. The company's purchase from its affiliate of course would be non-arm's-length.

The MMS also has included in the arm's-length definition a provision whereby if one person has less than a 20 percent interest in another person which creates a presumption of noncontrol, MMS can rebut that presumption if it demonstrates actual or legal control, including the existence of interlocking directorates. For example, there may be situations where ownership of 5 percent of a very large corporation could give a person sufficient control to direct the activities of that corporation. Where there is evidence of actual control, MMS can rebut the presumption of noncontrol.

Finally, in response to those commenters who believed that the lessee has the burden of demonstrating that its contract is arm's-length, MMS has included such a provision in the valuation sections, discussed below.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership (e.g., 5 percent) must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed.

Audit—Only a few comments were received on this proposed definition. All the comments focused on the portion of the definition which followed the first sentence. Generally, these comments suggested that the proposed definition limited the scope of MMS's authority, particularly with regard to Indian leases.

MMS Response: It is MMS's intention that the definition not be limited. Therefore, the final rule deletes everything following the first sentence of the proposed definition because the succeeding sentences were only intended to be explanatory.

Condensate—One industry comment advocated adding the phrase "beyond normal lease separation procedures" after the word "processing" in the first sentence of the definition in order to clarify that "liquid hydrocarbons resulting from normal lease separation procedures are condensate" whereas "processing," in this context, refers to more sophisticated facilities that are generally located off lease.

MMS Response: This definition has been retained intact in the final rule. However, a definition of the word "processing" has been added for clarification purposes at § 206.101.

Contract—A comment from a State commenter recognized that "as a matter of law, oral contracts are enforceable." This commenter recommends that the words "oral or" be deleted because they argue that "there is no way that the terms of such contracts can be adequately verified to assure that all of the consideration and benefits under it have been honestly detailed by the

lessee under proposed § 207.4. Thus, the government, in a situation involving an oral contract, must assure itself that it has all of the information relevant to the transaction; reliance on the 'contract' document—drafted by one party only—would be insufficient."

MMS Response: The MMS has retained this definition as proposed because, in accordance with § 207.4, oral contracts negotiated by the lessee must be placed in written form and retained by the lessee. If the MMS believes that the written documentation is not a truthful representation of the actual terms of the sales agreements, the lessee may be liable for penalties for submitting false, inaccurate, or misleading data.

Gathering—MMS included in the draft final rule a definition of gathering as the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area (if authorized by the BLM or MMS operations authority). In most instances, gathering is a cost of production or marketing for which MMS will not grant any deduction.

MMS received numerous comments from industry concerning the phrase "or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively." These commenters stated that the phrase was unclear and that it should be removed from the definition.

MMS Response: The definition has been retained intact. The operational regulations of both BLM and MMS require that a lessee place all production in a marketable condition, if economically feasible, and that a lessee properly measure all production in a manner acceptable to the authorized officials of those agencies. Unless specifically approved otherwise, the requirements of the regulations must be met prior to the production leaving the lease. Therefore, when approval has been granted for the removal of production from a lease, unit or communitized area for the purpose of treating the production or accumulating production for delivery to a purchaser prior to the requirements of the operational regulations having been met, MMS does not believe that any allowances should be granted for costs incurred by a lessee in these instances.

Gross Proceeds—MMS received many comments on the definition of "gross proceeds" from industry, States, Indian Tribes, and a State/tribal association.

One State agreed with the language of the proposed definition and supported its endorsement as follows: "Such a definition must be all inclusive. Any exceptions would only serve as precedents for carving more exceptions, and invite creative accounting mechanisms aimed at escaping royalty obligations."

One Indian commenter recommended replacing the word "entitled" with the phrase "accrued or accruing to" while another State commenter supported retaining the word "entitled" because it confirms the lessee's "obligation to act in the best interests of the lessor." This same commenter, however, pointed out: "In the Purpose and Background statement, MMS states that it is the intent of the regulations to include as royalty all of the benefits accruing, or that could accrue, to the lessee. However, the actual definition of gross proceeds does not encompass all potential benefits. For example, a lessee may accept a lower price for its production from a Federal lease for the opportunity to sell to the particular purchaser its production from other leases. Despite the difficulties of attributing a value to such an opportunity, it is a benefit accruing to the lessee under its sales contract. The language of the definition, however, suggests that 'gross proceeds' only encompasses consideration that has been stated in dollar terms. Thus, it technically does not include all of the benefits that could accrue under a sales contract."

A majority of those commenters that objected to the proposed definition expressed the same basic arguments in support of their position. Several industry commenters argued that the proposed definition contains language which is too expansive, claiming that the word "entitled" injects uncertainty and subjectivity into valuation. In addition, this term is considered objectionable by some because, as one commenter stated, "the intent of 'entitled' is not clearly understood, nor is it a clearly defined legal term. Lessees cannot know how either they or MMS auditors will, or should, apply the 'entitled' concept." They recommend deleting this term and abandoning the underlying concept altogether.

A few industry commenters suggested that the proposed definition does not conform to the terms of Federal and Indian oil and gas leases nor the statutes under which they were issued. They argue that the present definition "attempts to collect royalty on consideration received by the lessee [for] other than production saved, removed, or sold from the lease" and that it seeks to redefine "value" to include income or credits which are unrelated to such production.

Other industry commenters agreed with this overall approach, especially as it relates to reimbursements for "production costs" and "post-production costs." One commenter addressed this point at length: "This definition must be changed to limit the royalty to the value of the production at the lease. The current expansive definition allows MMS to reach far beyond that value to confiscate the value added by post-production activities. The MMS has misread the *The California Co. v. Udall* decision to require the lessee to do much more than place production in a marketable condition. If production could be sold at a lease but the lessee determines to enhance the value by retaining control and further processing it, the value added or reimbursements for the costs of such further handling are not appropriate for consideration in the value of the product for royalty purposes."

Many of the industry commenters objected to the "laundry list" of services they asserted are unrelated to production being included as part of "gross proceeds." One industry commenter urged MMS to adopt language which would specifically allow a variety of costs to be deducted from gross proceeds in order to arrive at the value of production.

A few industry commenters concluded that the definition, in its present form, is inconsistent with industry practice and not responsive to the "interaction of market forces."

One industry commenter noted that "some of the items specifically identified as subject to royalty under the gross proceeds concept are the subject of ongoing litigation and the MMS should not preempt judicial decision through regulation."

One State commenter asserted that the definition is only necessary as a determinant of minimum value and, in this sense, should be as expansive as possible. This commenter suggested that "the words 'but is not limited to' need to be added after the words 'gross proceeds, as applied to oil also includes.' " This language was thought to be needed because there is "no reason to restrict the term gross proceeds to encompass only those items listed." Furthermore, this commenter is concerned that the present language will "restrict the Secretary's authority to react if different types of sales arrangements arise in the future."

Another industry commenter asserted that there are "serious ambiguities and

inconsistencies" in the definition of gross proceeds "as related to transportation deductions imposed by oil purchasers. These ambiguities and inconsistencies could be interpreted to preclude the use of a market-based value for royalty oil where oil purchasers in the area deduct actual transportation costs from their posted prices."

A large number of industry commenters recommended that MMS adopt the definition proposed by the RMAC Oil Valuation Panel which reads as follows: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from a Federal, Tribal, or Indian allotted lease."

MMS Response: In the draft final rule, MMS included a definition which was modified slightly from the original proposal. In this final rule, MMS has again made a modification discussed below. MMS retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. (See § 206.102(j)). It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the oil, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract. Moreover, as noted earlier, many commenters stated that the "total consideration" concept properly belonged as part of gross proceeds, not in the definition of arm's-length contract. Therefore, MMS purposefully has drafted the gross proceeds definition to be expansive and thus include all types of consideration flowing from the buyer to the seller. Toward that end, MMS has replaced the word "paid" used in the draft final rule with the term "accruing." There may be certain types of consideration which are not actually paid by the buyer to the seller, but from which the seller benefits. The term "accruing" ensures that all such consideration is considered gross proceeds.

The so-called "laundry list" of services are all benefits that a lessee may be legally entitled to under the terms of the contract and are considered part of the value for the production from the lease. Costs of production and placing production in marketable condition are (with a few exceptions addressed later in this preamble) considered services that the lessee is obligated to perform at no cost to the Federal Government or Indian lessor.

Indian Tribe—MMS has corrected the typographical error in the proposed definition and has replaced the word "state" with the words "United States."

Lease—One Indian commenter focused on the following issue: "Inclusion of any contract, profit-sharing arrangement, joint venture, or other agreement in the term 'lease' as opposed to a more standardized Bureau of Indian Affairs (BIA) form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain explicit provisions on payment of expenses and division of revenues."

MMS Response: Contracts, profit-sharing arrangements, and joint ventures are all examples of types of valid leases already in existence. All specify royalty provisions, some more detailed than others. Nonetheless, they all qualify under the definition of "lease." Therefore, MMS has retained the proposed definition in the final rule.

Lessee—The proposed definition of "lessee" generated comments from the industry and from States. By far the most significant issue raised is that the proposed definition is inconsistent with the statutory definition of "lessee" found in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The proposed definition uses the phrase "or any person who has *assumed* an obligation" whereas the language in FOGRMA uses the word *"assigned"* in place of the word "assumed." The commenters argued that MMS's use of the word "assumed" expands the definition beyond the intent of Congress and "seeks to invalidate the lease provisions with respect to royalty payment * * *." They further asserted that there is no reason to redefine the term and recommended using the definition found in FOGRMA at section 3(7), 30 U.S.C. 1702(7).

Two industry commenters suggested that the definition be narrowed to "exclude persons who have assumed an obligation to make royalty and other payments required by the lease." Their argument focused on the difference in responsibilities between lessees and payors: "The payor is not necessarily a lessee and should not be defined as one. A lessee is bound by the terms of a lease agreement while a payor is not."

Two industry commenters suggested that the definition as provided in FOGRMA should be revised for the purposes of these regulations for the sake of clarity.

A State commenter objected to the proposed definition because it has the effect of spreading "the reporting and payment responsibility among numerous parties. With each of these parties reporting and paying separately, no single party has the responsibility to insure that 100 percent of all production is reported and 100 percent of the royalties are paid."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." The term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM, or BIA.

Load Oil—One industry commenter suggested that the word "fuel" be added as noted in the following proposed language: "*Load oil* means any oil which has been used with respect to the operation of oil or gas wells for *fuel,* stimulation, workover, chemical treatment, production or such other purposes as the operator may elect."

A State commenter recommended deleting the phrase "as the operator may elect" from the definition because: "There is no reason to institutionalize, in an enforceable regulatory form, a standard of lessee discretion."

MMS Response: Load oil is distinguished by MMS as oil used for the purposes of stimulating production through injection into the wellbore. Using oil for the purposes of enhancing the value of, or otherwise treating, lease production at the surface is not considered "load oil." Thus, oil used as fuel is not load oil. Also, in order to eliminate confusion, MMS has deleted the phrase "or such other purposes as the operator may elect."

Marketable condition—Only a few persons commented on this definition. A State commenter addressed the following concerns: "The definition states that product will be deemed marketable if it is 'in a condition that will be accepted by a purchaser under a sales contract typical for the field or area.' Such contracts, now or in the future, may provide that the purchaser

bear the costs of the treatment necessary to place products in a marketable condition. Under the definition, as written, therefore, there would be a theoretical market for untreated product, and MMS would lose the benefit of the increased value attributable to requiring the lessee to perform the necessary conditioning.

"An additional problem exists because of the difficulty of determining what is 'typical' for the field or area. This is because of the same informational difficulties that disable MMS from adequately applying the majority portion analysis. Without full access to the range of sales arrangements that may exist for production in a given area, MMS will be forced to rely on lessee-selected documentation in order to determine what type of conditioning is 'typical' for the area."

MMS Response: The MMS believes it is highly unlikely that the oil industry would change the quality requirements for oil sales to avoid paying royalties on nonrecoverable marketing costs. If such an arrangement occurred, MMS would then need to determine if the arrangement is an attempt to avoid paying royalties on the market value of the oil, or a contract to not only purchase the oil, but to place it in marketable condition as well. In either case, the costs for placing the product in marketable condition would not be an allowable deduction from the value for royalty purposes. (See § 206.102(i)(1)).

MMS received several comments that sales to marketing affiliates who then resell the oil to third persons should not be treated under the rules as non-arm's-length sales. MMS has addressed this issue in the valuation rules discussed below, and is including a definition of marketing affiliate as an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

Net-back method—Two State commenters objected to the proposed definition and industry commenters recommended adding clarifying language. The following discussion outlines the position of the two State commenters that found the proposed definition objectionable: "Briefly, our objections are twofold: 1. Net-back is a useful method to independently cross-check lessee declared values, and thus its use should not be restricted to those situations in which the 'first' sale, transfer, or use is downstream from the lease.

"Second, net-back should be allowed from any reasonable point at which a value can be ascribed to the product. There is no guarantee that the 'initial sales point' or 'first alternate point' will exhibit the open market conditions essential for attribution of a true value for the products.

"We therefore propose the following alternate definition: Net-back method means a procedure for valuing or verifying prices assigned to lease products or for independent cross checking of the validity of the gross proceeds of lease products or of prices posted or paid in a field or area. The procedure involves calculating back from any downstream point at which values for such products reasonably and fairly can be derived. In applying the net-back, consideration will be given to the reasonable costs of processing and transportation from the producing lease, unit or communitized area to arrive at a value for the products at the lease."

The industry commenter recommended that the following language be added to the proposed definition: "In net-back calculation the alternate point used for value determination shall be the point which is the closest point to the lease at which a price for similar lease products can be established by alternate means. Such alternate means may include posted prices or published spot market prices."

MMS Response: Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point off the lease. MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where oil production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the oil cannot be determined through application of the first four benchmarks in the regulations (see § 206.102(c)), then a net-back method would involve beginning with the sale price of the electricity and then deducting the costs of generation and transportation, thus working back to a value at the lease. In the draft final rule, MMS used the phrase "ultimate proceeds" to try and refer to the downstream product. Many commenters thought the term would result in MMS doing a net-back from the furthest downstream product, even to the point of "Stainmaster Carpet" or "model airplanes." This was not MMS's intent. Therefore, the term "ultimate" has been deleted and a reference included to starting the net-back at the first point at which reasonable values for any product may be determined by comparison to other sales of such products. Thus, if there are five different stages of chemical or fiber products between oil production and "Stainmaster Carpet," if the value of the second product can be determined through comparison with sales of other such products in the same market, MMS would begin the net-back from that product, not from the sale price of the carpet.

Person—One Indian commenter supported the inclusion of "joint venture" in the definition of "person" while two industry commenters recommended that "joint venture" be deleted. The rationale these two commenters rely on as the basis for recommending deletion is that the term "person" is used in the definition of "arm's-length contract" and if "that definition is not altered as suggested herein, then inclusion of a joint venture in the definition of person will further narrow the definition of arm's-length transaction by clouding the issue of control and the application of the definition [of] arm's-length to other joint venturer transactions." Another industry commenter advocated replacing the word "firm" with the word "company" because they believe that, in this context, it would be more appropriate.

MMS Response: Because the definition of arm's-length contract has been modified to include the BLM "control" language, most of the comments on this definition no longer are relevant. Therefore, MMS will retain the proposed definition of "person" intact in the final rule.

Posted price—The proposed definition received only a few comments, two of which recommended expanding the definition of posted price to include the phrase "or at the specific onshore or offshore terminal(s) listed in the announcement" after the words "in the field." These industry commenters stated that there are "currently very few 'field postings,' rather there are terminal postings" and that expansion of the definition as noted above would avoid confusion in applying the definition.

Another industry commenter believed that the word "posted" is outdated and that some purchasers may not publish a price bulletin, instead providing price quotations or notices to any seller desiring to do business with the purchaser.

A State commenter recommended deleting the phrase "net of all deductions" for the following reasons: "The 'net of all deductions' language should be deleted. MMS has proposed a system of allowances, which as a practical matter makes the 'net of deduction' language unnecessary for the purposes of defining 'posted price.' This

proposal could be interpreted to institutionalize the allowances without a mechanism of independent cross-check by MMS.

"Common industry deductions are for transportation and conditioning. Yet there are no restrictions upon what a poster can include as a deduction from the posted price. Thus MMS must retain the power to scrutinize such matters, and add such deductions back into the value of the production when necessary."

This same commenter believed that the definition is too restrictive: "We also object to restricting the definition of posted price to formal price bulletins. Rather, the definition should be broader and include both prices posted and those regularly paid. It is not unusual for a buyer to come into the market and offer publicly a price for crude, which is like a posting but not necessarily a price bulletin. Such publicly announced offers to buy could be at a price higher than offered in a price bulletin, and are no less 'market determined' than supposedly are postings in bulletins. Price bulletins are, generally, only circulated by the major companies and thus reliance on them may give undue advantage to the ability of those companies to establish prices."

MMS Response: The MMS is expanding the definition in the final rule to include references to onshore and offshore "terminal postings" and "price notices." For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all adjustments" has been revised to read "net of all adjustments to." As used in this definition, the term "adjustments" refers to deductions from the price of oil for quality adjustments such as API gravity and sulfur content. Adjustments for location also may be taken into account where appropriate.

Processing—MMS has added a definition of "processing" as any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. Under this definition, the changing of pressures and/or temperatures in a reservoir is not considered processing.

Section 206.102 Valuation standards.

Section 206.102(a) sets the basic standard that the value for royalty purposes will be the value of the oil determined pursuant to this section less applicable allowances. One State commenter recommended that the phrase "less applicable transportation allowances" be deleted because it is unnecessary, confusing, and because it implies that the lessee can deduct the transportation allowance from the value received and report the resultant reduced value as a single line item.

MMS Response: The regulation as adopted refers to "applicable" allowances, which includes both transportation allowances and the limited allowances provided by § 206.102(i)(2) of the final rule. It does not imply that any and all costs can be deducted. Also, it refers to "this Subpart" which includes § 206.105. That section provides complete details regarding transportation allowances. Therefore, this suggestion was not adopted.

Two Indian commenters recommended that the paragraph be modified by (1) deleting any reference to the transportation allowances because they are improper for Indian leases, and (2) adding the phrase "in marketable condition."

MMS Response: Transportation allowances are allowable under most Indian leases. It has been MMS's practice to grant such allowances. If an Indian lease restricts such allowances, then the lease terms will govern.

The MMS does not agree that the phrase "in marketable condition" should be inserted prior to the word "determined." Section 206.102(i) requires that oil be placed in marketable condition at no cost to the lessor. Thus, because § 206.102(a) provides that value be "determined pursuant to this section," the marketability requirement already is included.

The MMS is including in the final rule a new paragraph (a)(2) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the value for royalty purposes will be based upon the higher of those two values. The draft final rule included a provision that if MMS determined that the major portion results in an unreasonably high value, then it would not be used for royalty purposes. Many Indian commenters thought that, for their leases which include a specific reference to the major portion, that value should establish a minimum value, and that a major portion value in most cases will be reasonable since at least half the oil is sold at or above that price. MMS agrees and has made the change to the final rule.

The MMS is also including in paragraph (a)(2) a description of how the major portion is computed. It will be determined using like-quality oil sold under arm's-length contracts because non-arm's-length contracts may not reflect market value. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one barrel of the oil (starting from the bottom up) is sold.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.102(b) provides the valuation procedure for valuing oil sold pursuant to arm's-length contracts. Many comments were received regarding the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. They were about equally divided in number as to those in favor and those opposed.

Several State and Indian commenters, and one State/Indian association disagreed with the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. The commenters contend that, historically, gross proceeds has been regarded as a minimum value and that it has long been recognized that a market value clause in a lease "is distinctly and substantially different from a gross proceeds clause." They were concerned that the concept establishes an industry honor system. Also, concern was expressed that the proposed regulations be consistent with the provisions of the Indian lease agreement, and they questioned whether the proposed regulation permits the Secretary to discharge his/her responsibilities to the Indian lessors. These commenters maintained that whether an arm's-length transaction yields market value depends upon the definition of arm's-length contract.

Two State and two Indian commenters expressed concern that the proposed regulations will institutionalize an industry "honor system" for valuation of Federal royalty production. The commenters stated that the rules provide no mechanism for independent oversight and cross-check of lessee declarations of value and impose such impossible information

burdens on government that they can only result in total reliance on lessee-generated information. They stated further that whether an arm's-length transaction yields market value depends upon the definition of "arm's-length" and whether independent price checks confirm the receipt of proceeds.

The commenters pointed out that many sales arrangements may appear to be arm's-length on the surface, but in actuality the producers are "captive shippers" subject to forced sale and the purchaser's take-it-or-leave-it price. This scenario is stated to be contrary to the common legal understanding of an arm's-length market-determined price. The commenters noted that MMS's definition of "arm's-length" does not even contain the minimum acceptable requirements, in a legal sense, necessary to assure that such contracts are, in fact, arm's-length. They argue that the use of an arm's-length/gross proceeds valuation method requires that such matters as open-market conditions and the relationships between parties, beyond mere affiliation, be investigated. Also, the commenters stated that MMS does not confine arm's-length to those contracts that involve only the consideration for the sale of leased products. Coupled with the proposed definition of gross proceeds, the commenters believe "this allows lessees the opportunity to manipulate the prices received for their production from a Federal lease by accepting a lower price in order to sell production from other non-Federal leases, possibly at a more profitable price."

MMS Response: In response to a large number of comments from the States, Indians and industry, MMS has modified the regulations which govern the valuation of oil production sold pursuant to arm's-length contracts. For almost all such sales, the value for royalty purposes will continue to be the gross proceeds accruing to the lessee. Under MMS's existing regulations, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable, though not conclusively, as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. MMS typically accepts this value because it is well grounded in the realities of the market place where, in most cases, the ⅞ths or ⅝ths owner will be striving to obtain the highest attainable price for the oil production for the benefit of itself; the royalty owner benefits from this incentive. It also adds more certainty to the valuation process for payors and provides them with a clear and equitable value on which to base royalties. Under the final regulations, in most instances the lessee will not need to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States which assist MMS in the audit and enforcement effort. The gross proceeds standard will give auditors an objective basis for measuring lessee compliance. It will reduce audit workload and reduce the administrative appeal burden which results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the Buyer to the Seller. As an illustration, in return for Seller's reduced price for oil production from a Federal lease, Buyer may agree to reduce the price of gas it sells to the Seller from a non-Federal lease. This agreement is not reflected in the oil sales contract. In the event that MMS becomes aware of consideration that exists outside the four corners of the contract, even if the parties are not affiliated and the contract is "arm's-length," MMS may require in paragraph (b)(1)(ii) that the oil production be valued in accordance with paragraph (c), the standards used to value oil disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts.

MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties.

Although many commenters disagreed with the requirement, the final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the gas. The commenters believed that values already were subject to audit and that was a sufficient safeguard. MMS is retaining this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists once the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of a patently imprudent contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(1)(iii) if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS may require that the oil production be valued pursuant to the first applicable of paragraphs (c)(2), (c)(3), (c)(4), or (c)(5). Thus, MMS first must determine that a price is unreasonable, for example by looking at comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market the production for the mutual benefit of itself and the lessor.

MMS believes that new § 206.102(b)(1) establishes a more definable standard than paragraph (b)(1) of the draft final rule at 52 FR 30857 ("whether there may be factors which would cause the contract not to be arm's-length"). While MMS retains the discretion under this section not to accept an arm's-length contract price as value, which many commenters thought was a necessary provision in these regulations, there are limits on the exercise of that discretion.

If valuation in accordance with the fourth and fifth benchmarks in paragraph (c) is required, then the lessee also must follow the notification requirements of paragraph (e)(2).

One Indian commenter suggested that the lessee should certify that this is the highest price he could have received for that oil at the time of the sale. The same commenter also noted that MMS's regulations, at a minimum, must be consistent with the language of the Indian leases. Other Indian commenters

stated that the concept of basing royalty on gross proceeds received under an arm's-length contract is not in accord with the responsibilities of the Secretary. One of these commenters stated that "the lease and regulations provide that value be determined, not gross proceeds. Gross proceeds is merely evidence of such value. Acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, especially if the previous MMS practice of accepting reports from lessees without scrutiny continues."

MMS Response: The MMS believes that the regulations as adopted, with the changes discussed earlier, will permit the Secretary to discharge his/her responsibilities properly.

One State commenter objected to the phrase "monitoring, review, and audit" or similar phrases which appear throughout the proposed regulations because it suggests that the terms listed are synonymous. An MMS review or reconciliation is not the same as a full audit. The commenter suggested that the following paragraph be added:

"( ) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes or allottees until after full audit."

Also, the commenter suggested that the words "lease terms, or relevant statutes" need to be added after the words "requirements of these regulations" in proposed § 206.102 (b) and (d)(1), for purposes of clarification and precision.

MMS Response: The suggested additional paragraph language has been included in the final rule as § 206.102(k) with minor modifications. This paragraph reflects MMS's longstanding view that a value determination based on limited review does not stop the MMS from redetermining that value until an audit has been completed and the audit period formally closed. MMS intends, however, to prepare more detailed guidelines as to when an audit is closed. The phrase "lease terms, or relevant statutes" has not been added to § 206.102(b) because there is a provision in the regulations that in the event of conflict the lease terms govern. Likewise, all persons are subject to statutory requirements.

Two suggestions were made regarding the establishment of a floor value. One Indian commenter objected to the proposed regulations because they "* * * would permit MMS to rely upon an industry honor system for valuation of Federal royalty production." However, if MMS's proposed valuation approach is to be adopted, they suggested that § 206.102(b) be revised to read as follows:

"The value of oil which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area. If such proceeds do fall more than 10 percent of such prices, the value of oil in that case shall be 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area." It was stated that this approach will permit MMS to have a uniform and administratively simple benchmark to establish market value, rather than "evaluating each contract on a case-by-case basis in light of the many possible indicia of a sale at less than fair market value * * *."

Another Indian commenter stated that: "The proposed regulations would allow substantial manipulation and undervaluation of the royalty amount. Most centrally, it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation for the public's resources. At a minimum, only prices under *genuine* arm's-length contracts should be acceptable for royalty purposes. The proposed regulations would allow collusive contracts to qualify as 'arm's-length contracts.'" It was also stated that if MMS remains intent upon accepting royalty on the basis of what the commenter considers to be below-value contract prices, "we urge that MMS at least impose a floor value, such as 80 percent of the value of production as determined under the 'value' criteria applicable to oil not sold under arm's-length contracts."

MMS Response: The MMS generally does not believe that establishment of a "floor value" (other than gross proceeds) is appropriate or equitable because it could result in royalty being assessed on a value greater than the lessee received under an acceptable arm's-length contract. Where an arm's-length contract operates to set the price at which the lessee can sell the production, that contract likewise should set the royalty value in most circumstances. However, under the lease and the regulations, MMS has the authority to establish value for royalty purposes and will do so for non-arm's-length contracts where it is justified, even if such value is higher than the gross proceeds received by the lessee. Also, as explained above, for many Indian leases, because of the specific lease terms, MMS will compare values determined using arm's-length contract prices with the highest price paid for a major portion of production, and generally use the higher of the two.

One Indian commenter raised the question of what "which could accrue" means and also pointed out that if the value of oil is to be based on gross proceeds, the regulations need to be more precise in stating which gross proceeds are to be used.

MMS Response: The regulations include a detailed definition of the term "gross proceeds." The MMS believes the definition is adequate. MMS has deleted the phrase "or which could accrue" from the final rule.

Many commenters approved of the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. Basic reasons for approval were stated in one comment as follows: "This standard is fair and reasonable; it will promote necessary certainty and consistency for the lessor and lessee alike; it is based on the lease language; it is administratively feasible; and it relies on an objective valuation mechanism—the market. It is appropriate in arm's-length situations because both the buyer and the seller have agreed to be bound by the best price each thought it could get for the duration of the contract. In such circumstances the royalty owner's interest in securing fair market value is protected by the arm's-length nature of the transaction." The 11 industry commenters also objected to use of the phrase "or which could accrue" in the first sentence. This objection can best be summarized in the following comment: "Use of the phrase creates uncertainty and subjectivity and should not be implemented in regulations which must have certainty as a foundation." Industry commenters stated that it is unfair for the lessor to determine after the fact that proceeds "could be accrued." Also, one of these commenters noted that lessees act in a competitive market and "in the absence of fraud, cannot fairly be held to a *post hoc* determination that proceeds could have accrued." One of these commenters summarized as follows: "In sum, the proposed definition of 'gross proceeds' is in need of substantial revision. The MMS should modify it to include only those monies actually received for the sale of production. Other regulations which would require payment of royalties on phantom proceeds should also be amended accordingly."

MMS Response: The MMS believes that gross proceeds under an arm's-

length contract generally constitutes the market value of a commodity. This does not preclude MMS from establishing a value where necessary; e.g., the contract does not meet MMS's standards for an arm's-length contract or the lease agreement requires a different value. The phrase, "or which could accrue," is deleted from the final rule. As noted above, many commenters thought that this phrase would allow MMS to second-guess the price which the lessee agreed to in its arm's-length contract by arguing that other persons selling oil may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

Many comments were received regarding the proposed benchmark system in § 206.102(c). They were about equally divided in number as to those in favor and those opposed.

Several States, Indians, and one State/Indian association objected to the proposed benchmark system. Most of these commenters supported highest posted prices using the net-back procedure as verification. One of their objections to the benchmark system is that the proposed methodologies are unworkable and provide no reasonable method of verification. Another objection is that the proposed system would impair effective oversight and reduce royalties. Also, these objectors state that in their view the proposed procedures would severely burden the audit program and, as a practical matter, would preclude adequate verification of the "lessee's declarations." In addition, they stated that the use of the netback procedure is unduly restricted, and, to the contrary, should be used frequently for independent verification. They believe that more readily verifiable methods should be used to ensure that fair market value is being received.

One of these commenters summarized a number of objections as follows: "Historically, gross proceeds has been regarded as minimum value. however, the proposed benchmarks appear to be primarily aimed at converting gross proceeds as *the* value. Gross proceeds is not necessarily fair market value. Published gross proceeds are not always all consideration received, for example, drilling advances and special equipment lease agreements." Also, "* * * no mechanisms are provided to cross-check * * * values reported under the first three benchmarks; since MMS has taken the notion that it does not have the authority to obtain access to other arm's-length contracts from producers not obligated to report to MMS, comparisons could not be made." It was also stated that "The most effective benchmark, net back calculation, would never be used because of the prioritized order of other valuation methods."

Some commenters stated that the benchmarks should not be prioritized. Rather, value should be determined using the most applicable benchmark. These same commenters recommended modifying the first benchmark to require comparison with other posted prices or contract prices in the field.

MMS Response: The MMS believes that a prioritized benchmark system is workable and fair. Obviously, for OCS leases, MMS has access to information regarding all posted prices and contracts (if any). In addition, the majority of onshore fields with Federal lands are comprised of a significant percentage of such lands (if not the majority) so that needed price information is readily available. In many instances, Indian lands comprise a significant portion of an oil field. Where necessary, information sometimes can be obtained from the appropriate State agency. Although price and field boundary data are available for most onshore leases, the acquisition of volume data associated with an arm's-length sale has been difficult to obtain. Accordingly, MMS has added § 206.102(d) which provides that any Federal or Indian lessee will make available upon request to the authorized MMS, State and Indian representatives, and others, arm's-length sales and volume data for like-quality production in the field or area or nearby fields or areas. Undoubtedly, there will be a few cases where it will be difficult to obtain needed information, but this is true of any procedure adopted.

The MMS believes that in the vast majority of cases gross proceeds constitute market value. In those cases where this is not true, MMS will establish an appropriate value for royalty purposes. "Arm's-length" sales will not be accepted without question. The MMS will obtain needed information to ascertain that they are truly arm's-length as defined in the regulations.

In response to comments that the first benchmark should not accept a lessee's posted prices without some comparison of other postings in the field, MMS has modified the first benchmark. Under this benchmark, the value still will be the lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area). However, the lessee also must demonstrate that those prices are comparable to other contemporaneous posted prices or oil sales contract prices for purchases or sales of significant quantities of like-quality oil in the same field (or area). To evaluate comparability, the factors include price, duration, market or markets served, terms, quality of oil, volume, and such other factors as may be appropriate to reflect the value of the oil.

One Indian commenter criticized the benchmark system as follows: "The utter failure of MMS to recognize its obligation to maximize tribal royalties is evidenced also in the provisions governing valuations where arm's-length contracts do not exist. Each of the three alternative methods require a determination that the lessee's sales price is similar to that for purchases of significant quantities of like oil in the same field or area. The MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's contemporary posted prices. Posted prices in the oil industry, however, are generated by the purchasers and not the sellers. Either MMS had made an error in its drafting or this benchmark plainly is so ridden with potential conflicts of interest that it can not possibly be urged as consistent with the federal fiduciary duty to maximize Indian oil and gas resource returns."

Another Indian commenter suggested that the desired goal of certainty can be accomplished by use of the highest price paid method: "MMS' embracement of the contract price approach in its drive towards certainty in value can be as easily achieved through the highest price paid method. It would also encourage producers when negotiating contracts to come as close to that figure as possible knowing that is what they will have to pay the royalty on. The contract sales

approach proposed by MMS does not encourage obtaining the maximum value for the resource by the purchaser [lessee]."

MMS Response: In many instances the lessee, being a purchaser, has published a posted price bulletin. Posted price bulletins are generally available. In addition, the lessee must retain all data which are subject to audit. From experience, MMS does not believe that basing all royalties on the highest price in the field or area is fair or in the best interests of the Federal or Indian lessor. Therefore, such a standard was not adopted.

One State commenter noted that the modifier "contemporaneous" in three of the sections is vague and undefined. "For a purchase under a posting or contract to be used as an indicia of value for the monthly reporting period, it should relate to production during the same reporting period."

MMS Response: MMS has added § 206.102(c)(6) to the final rule which defines "contemporaneous" as postings or prices in effect at the time the royalty obligation is incurred. In effect, this means the postings or contract prices in effect at the time oil is removed, sold, or otherwise disposed of in a manner which results in royalty being due on the oil.

According to one State commenter, "It is difficult to establish an alternative system to calculate fair market value * * *. The MMS should use the posted price criteria of the benchmark system verified by a net-back analysis to assure the credibility of posted prices."

MMS Response: The MMS believes that the use of a net-back analysis on a routine basis to verify oil value is impractical and unnecessary.

Two Indian commenters expressed concern about the prioritized benchmark system. They argued that restricting the Secretary's ability to use different methodologies in any order the Secretary chooses will tie the Secretary's hands in dealing with difficult situations.

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his/her responsibilities to the Tribes and allottees and will provide certainty in the valuation process to both the lessees and lessors. Although a prioritized benchmark system does limit flexibility, this drawback is outweighed by the benefits of certainty.

One State commenter thought there is a lack of guidance in administering the prioritized benchmark system, and that MMS does not indicate what kind of evidence will be sufficient to permit an auditor to continue down the list of benchmarks.

MMS Response: The MMS will require that the lessee make a reasonable effort to apply a benchmark before proceeding to the next. Auditors must be satisfied that lessee information is sufficiently accurate and complete to implement a benchmark. The addition of § 206.102(d), whereby lessees must provide arm's-length sales and volume information, will assist in the enforcement of these "comparability" requirements. It would be impossible for MMS to attempt to implement a procedure where government has to make all the decisions. Such a procedure would impose a tremendous administrative burden which would be very costly.

Some industry and State commenters expressed concern regarding the lack of an adequate definition of the terms "significant quantities" and "field or area", and the administrative problems that will result therefrom. One State commenter stated that the term "significant quantities" is vague and undefined. An industry commenter recommended that the term "significant quantities" be deleted because (1) posted prices in an open marketplace "are for no other purpose than determining market value", and (2) the lessee has no way of knowing the quantity of volumes purchased by other purchasers in the area.

MMS Response: As was discussed in the preamble to the proposed rules (52 FR 1858, January 15, 1987), the term "significant quantities" is variable depending on the sales volumes from the field and the volume of production. What constitutes significant production from an onshore field may not be significant for an OCS field. Therefore, "significant quantities" will vary case-by-case.

One Indian commenter stated that "* * * many posted prices are artificially low because there is low demand, but there is still a threshold low amount where a company will purchase more than their demand" and recommended that "* * * the totality of the circumstances should be utilized (and set forth in the regulations), including spot markets, highest posted prices, and to some extent, posting for similar oil in other fields."

MMS Response: The current regulations, which are being revised in response to heavy criticism, list the various criteria with no specific priority. The purpose of the benchmark system is to provide all concerned with a reasonable degree of certainty as to criteria to be used in valuing oil.

One Industry commenter stated that the prioritized benchmark system "imposes a prejudicial valuation on an affiliated lessee" because a nonaffiliate receiving the same price as an affiliate would pay on actual proceeds received, whereas the affiliate may have to pay a higher royalty under, for example, benchmark 206.102(c)(2). The recommendation was made that "* * * the first applicable of the following subsection" * * * language in § 206.102(c) be replaced with "* * * any of the applicable subsections."

MMS Response: The situation described could occur. However, MMS believes that, generally, posted prices for like-quality oil in the same field or area will be comparable. Thus, there likely will be little or no disparity in the values in most situations.

Many industry commenters, a Federal agency, and an individual approved of the proposed benchmark system. One industry commenter stated that they "* * * strongly support the adoption of clear and consistent standards of valuation for royalty oil based upon the true value of the product—the price received in the marketplace for the sale of that oil. The valuation proposal * * * recognizes the interaction of competing market forces and recognizes that a seller of oil will normally negotiate the best deal it can to further its own interests. The use of a price that is generally available to all sellers is a much more reasonable approach to the determination of 'value' for a given supply of oil than the arbitrary selection of a price that one seller may have received under circumstances that do not include all sellers. Where an arm's-length contract does not exist, the benchmark system of valuation permits an objective procedure for arriving at the valuation based upon posted prices which have been the basis for sales of oil for many years." Another industry commenter supported both the benchmarks and their prioritization because both will add certainty to valuation determinations. Also, the use of the lessee's contemporaneous posting will provide a "benchmark valuation for many major producers." One industry commenter noted that "This ordering of the benchmarks is the result of extensive public comment which showed that, for valuation of oil, posted prices should be moved closer to the top of the hierarchy insofar as posted prices account for the vast majority of oil transactions."

MMS Response: The MMS believes that the proposed benchmark system is

a valid and realistic system for determining the value of oil not sold pursuant to an arm's-length contract. The benchmarks are primarily based on posted prices which are the normal basis for oil sales and which reflect the price of oil in a free and open market. Posted price information for significant quantities of like-quality oil sold from a field or area will normally be available. The addition of § 206.102(d) will permit necessary information on arm's-length sales to be obtained. In other situations, the benchmarks provide for use of spot sale prices, net-back, or any other reasonable method.

One industry commenter noted that most, if not all, posted prices are prices posted by a purchasing, marketing, or transporting entity, some of which may have producing lessee affiliates. "However, taken literally, there will not be a *lessee's* posted price."

MMS Response: MMS has added a new § 206.102(c)(6) which defines lessee, for purposes of this section, as including a designated purchasing agent.

One State commenter noted that proposed § 206.102(c)(1) fails to anticipate that a lessee could make purchases at different postings within the same reporting period and suggests that, in such a case, "the volume weighted average would seem to be appropriately specified, because it could be easily computed by the payor and would be less susceptible to manipulation by the payor."

MMS Response: The MMS concurs with this change and has included language to implement it in § 206.102(c)(1).

One Indian commenter stated that the use of this benchmark (contemporaneous posted prices) rather than the major portion analysis provided for in existing oil and gas regulations represents a breach of the Secretary's trust obligations.

MMS Response: The MMS believes that the regulations as adopted will permit the Secretary to discharge his/her responsibilities. Major-portion analysis will be used under the final regulations, where appropriate.

One industry commenter recommended that paragraph (c)(2) be modified by adding the phrase "known to the lessee" after the word "prices" so that the first part of the sentence would read, "The arithmetic average of contemporaneous posted prices, known to the lessee, used in arm's-length transactions * * *."

MMS Response: This suggestion was not adopted because it results in too great a degree of subjectivity.

One industry commenter supported the use of "arithmetic average" as a benchmark, but suggested that there should either be an agreement between the lessees and MMS as to which companies' postings are to be used, or that MMS publish a list of the companies whose postings may be used to calculate an arithmetic average. It pointed out that in the case of South Louisiana (used for offshore) there are at least one dozen companies that post oil prices and there could be price changes in one month on different dates by all of the companies.

MMS Response: The MMS may decide, upon request, on the basis of an individual case, to designate postings to be used in calculating an arithmetic average. It is not considered practical to do this continuously.

Three Indian commenters objected to the use of "arithmetic average" and recommended that a "weighted average" be used instead. Another commenter stated that use of "arithmetic average will not yield a true market value because the lessee is given the opportunity to manipulate prices by selling some oil at extremely depressed prices."

MMS Response: Paragraph (c)(2) requires consideration of postings of persons other than the lessee. Although the postings are available to the lessee and to MMS, volumes often are not. Thus, requiring a weight averaging of third-party data is not practical.

To make this benchmark "more workable and administratively feasible" one industry commenter recommended using the average of all postings of the relevant type of oil in an area.

MMS Response: The MMS has found that postings do not always indicate a purchaser's willingness to buy. Therefore, any average which includes all postings may become skewed because of posted prices which are not market responsive. Pursuant to § 206.102(c) (1), (2), and (3), there must be significant quantities of oil sold before a posting or contract price can be averaged in.

One industry commenter recommended that paragraph (c)(3) be modified by adding the phrase "known to the lessee" after the word "contracts", and by replacing the phrase "area or nearby areas" with the phrase "field or area" for reasons of "clarification."

MMS Response: The addition of the phrase "known to the lessee" was not adopted because it would result in inserting too great a degree of subjectivity. The term "field or area" was not adopted because the intent is to utilize a larger area than "field or area" in reviewing arm's-length contract prices.

One State commenter stated that "Subparts (iii) and (iv) attempt to distinguish between arm's-length contracts and spot sales. But, there is no basis for saying arm's-length spot sales are not also arm's-length contracts under the definitions. Additionally, there is no requirement (and there should be) that only spot sales which are genuinely arm's-length should qualify as indicia of royalty value."

MMS Response: The MMS concurs that the spot sales used in the benchmark should be arm's-length spot sales and will insert the term "arm's-length" immediately preceding "spot sales" in the final rule, § 206.102(c)(4). With regard to the first comment, if a spot sale is for a significant quantity of oil, it could be considered under paragraph (c)(3).

Some States and Indians stated that when applying benchmarks, it should not be necessary in all circumstances to look to all other sales in the field. In other cases, it may be necessary to look beyond the field. MMS agrees that the size of the sample cannot be predetermined but must depend upon the terms of the applicable benchmark and the actual circumstances in the field or area.

Most of the State and Indian commenters who opposed the benchmark system supported highest posted price with the use of a net-back method for verification of values used. One of the State commenters in describing MMS's proposed use of net-back in proposed § 206.102(c)(5) as too restrictive, made the following statements: "* * * the government would carry the burden of establishing that none of the preceeding benchmarks can be applied before it would [be] authorized to use net-back * * * In effect, net-back will rarely, if ever, be used. At the same time it is the only method of valuation proposed by MMS that can be applied independently from lessee submitted documentation."

MMS Response: The MMS agrees that there will be infrequent use of the net-back method. It is believed, however, that the other benchmarks which have higher priority will result in a reasonable value for royalty purposes and obviate the need to undertake a labor-intensive net-back method. The MMS routinely will verify lessee-generated information used in applying the benchmarks during its monitoring process and through audit.

One State commenter articulated the viewpoint of a large number of other commenters by recommending an alternative method of valuation, namely use of the highest posted price paid or

offered in the field or area with the net-back procedure used as verification or backup.

The commenter also stated that "* * * the approach we suggest—highest posted or a refined product value net-back—serves the twin goals of assuring the collection of fair market value and providing certainty to the lessee. Highest [price] posted or paid is more easily determined than the arm's-length nature of a contract, and a refined product value can be calculated by the lessee itself or provided by the government. It also is an approach that is independent of lessee-generated information and thus meets Congress' intent that independent methods of verification be employed. Gross proceeds would continue as the absolute minimum acceptable value."

MMS Response: The MMS believes that gross proceeds received under arm's-length contracts and posted prices used to purchase significant quantities of oil in arm's-length transactions generally represent the market value of oil and does not agree that it is necessary to perform a refined product net-back analysis to verify them.

One industry commenter expressed approval of the concept in proposed paragraph (e)(1) that prior MMS approval generally need not be obtained where value is determined pursuant to paragraph (c). One Indian commenter expressed concern that "once approval is granted, follow-up audits are unlikely", and recommended that "There should be provisions mandating routine MMS audits of valuation methods occurring at intervals not greater than one year." One industry commenter objected to the fact that MMS will not be giving prior approval stating that this subsection places "the burden * * * on the producer to prove the determination of value." One State commenter stated that the regulation should specify that the lessee retain "all data relevant to determination of royalty value," instead of "all available data to support its determination of value." That State commenter stated that the regulation should specify that MMS "will" order compliance when incorrect payments are discovered, rather than stating "MMS may direct a lessee to use a different value."

MMS Response: Although MMS will be making periodic audits, it is not appropriate to specify the scheduling, type, and timing of audits in these regulations. With regard to the second comment, the lessee is responsible to comply fully with the regulations by properly valuing the oil, for royalty purposes, in accord with the appropriate benchmark and to retain all relevant data. The MMS has adopted the suggestion that the phrase "all data relevant to determination of royalty value" be substituted for "all available data to support its determination of value" in § 206.102(e)(1). Also, the word "will" has been substituted for the word "may" in the last sentence.

Section 206.102(f) was proposed as § 206.102(e), and provides that lessees will pay additional royalties and interest if the lessees improperly determine value. One industry commenter recommended that any "retroactive valuation determinations" on the part of MMS "be limited to fraudulent and noncompliance situations." That commenter went on to suggest that if MMS determines that a lessee underpaid royalties, then the interest associated with those royalties should only accrue from the date of that determination until royalties are paid.

MMS Response: The lessee is responsible for properly determining value for royalty purposes in accordance with the lease terms, regulations, and appropriate instructions and court decisions. Accordingly, if royalty is underpaid, the lessee is responsible for the additional royalty due plus any interest from the time such payment(s) should have been made. MMS has adopted this section as it was proposed.

Another industry commenter agreed that underpayment of royalties was subject to interest, but recommended that MMS likewise should pay the lessee/payor any interest "statutorily authorized" on reimbursed credits or royalty offsets when royalty overpayments are discovered.

MMS Response: The MMS is barred by law from paying interest on royalty overpayments, but is required by law (i.e., FOGRMA) to collect interest on late payments.

Section 206.102(g) was proposed as § 206.102(f), and prescribes a procedure for a lessee to request a value determination from MMS. Some industry commenters suggested that there be a time limit of 120 days for MMS valuation responses. One of these commenters also recommended that there be no penalties or accrual of interest for any underpayment of royalties during this period (which would not be known until after MMS's decision).

MMS Response: The MMS will make every effort to respond timely, but this is necessarily dependent upon available resources. MMS cannot agree to a regulatory time limit. Because the lessee is responsible for proper valuation, interest is assessed if the lessee makes an improper valuation. The MMS believes a lessee should be able to request a valuation determination at any time. One of the changes to this section clarifies that when MMS makes a value determination, it may use any of the valuation criteria authorized by the rules. This gives MMS the necessary flexibility to deal with unusual situations which otherwise do not fit the regulations.

One commenter suggested that there should be opportunity for review of a value determination by the affected royalty recipient (State, Tribe, etc.) before a final decision is made because, without such review, the cooperative audit role is rendered meaningless.

MMS Response: The MMS does not consider it practical to require a review by a State or an Indian lessor when a value determination is made. The MMS will attempt to coordinate its value determinations with States doing audits under section 205 of FOGRMA and Indian Tribes doing audits under section 202 of FOGRMA. This does not make the cooperative audit role, in accordance with FOGRMA, less meaningful or effective.

One industry commenter recommended that the provision be clarified that an MMS rejection of a proposed valuation determination is appealable to either the Director or Interior Board of Land Appeals (IBLA).

MMS Response: This modification is not necessary because all MMS final orders or decisions arising from the regulations in Titles 25, 30, and 43 are appealable pursuant to 30 CFR Parts 243 and 290.

One Indian commenter recommended that lessors also should be able to request MMS determinations. They also recommended that the regulations should require MMS to notify Tribes/allottees of any changes in valuation determinations.

MMS Response: The regulations as adopted in § 206.102 (g) do not provide a specific procedure for the Indian lessor to request a valuation determination from MMS. However, MMS always is available to discuss with Indian lessors any valuation issue regarding their leases.

One State commenter recommended that the third sentence be modified by adding the word "all" before "available data", and replacing "to support its proposal" with "relevant to the valuation of its production". Also, the phrase "subject to audit" should be added.

MMS Response: The MMS has made some of these changes for purposes of clarity and comprehensiveness.

Section 206.102(h) was proposed as § 206.102(g). It provides that the value

for royalty purposes cannot be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances. Several industry respondents considered the phrase "or which could accrue" objectionable and urged its deletion. The main reason given for their position is that the language creates uncertainty and subjectivity, contrary to MMS's stated objective of gaining certainty and precision in royalty accounting.

MMS Response: MMS has deleted the phrase "which could accrue" from the final rule. As explained above, with respect to § 206.102(b), MMS is satisfied that the term "accruing" includes all consideration to which the lessee is entitled pursuant to its contract, not just what it actually receives.

Industry commenters suggested that some off-lease post production costs (such as those carried out on leases in "especially hostile or remote environments") and certain on lease post-production costs (such as those deemed to be "extraordinary" for onshore leases, the cost of submerged gathering lines, the cost of environmental compliance, and the cost of post-production facilities installed on leases in water depths greater than 400 feet for offshore leases) should be shared by the lessor and counted as deductions from royalty payments along with transportation allowances. One stated rationale for this suggestion is that some "post-production" costs enhance the value of the oil and, therefore, the costs should be shared by both lessee and lessor, as are the benefits. One commenter simply stated that the phrase "and other deductions" should be added to the "less applicable transportation allowances" language.

MMS Response: The MMS has modified § 206.102(h) to refer to deductions for any type of allowance, not just transportation allowances. As explained below, MMS has adopted a rule which would provide for deduction of certain extraordinary costs.

State commenters objected to the deduction of transportation allowances from value and particularly from the gross proceeds, especially if gross proceeds is considered a "minimum value." One of the commenters stated that the "less transportation allowances" language is particularly confusing because "it suggests that lessees can deduct the allowance from the value determination" rather than as a separate line item as required by § 206.105(c)(4) of the final rule.

MMS Response: Section 206.102(a) provides that the value for royalty purposes is the value determined in accordance with § 206.102 (i.e., arm's-length gross proceeds or a value determined using benchmarks) less applicable allowances. The purpose of § 206.102(h) is to make it clear that no matter what valuation method is used, the value for royalty purposes cannot be less than the lessee's gross proceeds less applicable allowances. Therefore, if a benchmark-derived value less applicable allowances is less than gross proceeds less applicable allowances, gross proceeds less applicable allowances is to be used as the value for royalty purposes. In either event, the lessee may be entitled to deduct transportation allowances to determine value, for royalty purposes, at the lease (unless the benchmark derived value already is a value at the lease—in that event no further transportation allowance would be authorized).

Section 206.102(i) was proposed as § 206.102(h). This section addresses the lessee's obligation to place lease production in marketable condition. Five industry commenters opposed the concept that the lessee is responsible for placing the product in marketable condition at no cost to the lessor and recommended specific deletion of language in the proposed regulation to accomplish this. One industry commenter recommended that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence, and another industry commenter pointed out that the lessor does share in marketable condition costs under net-profit-share leases.

MMS Response: Historically, MMS's policy and practice is that the lessee generally is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable. However, MMS has considered carefully all of the comments on this issue and decided that there may be certain circumstances where some extraordinary costs for gathering, desulfurization, or storage should be allowed as a deduction. Such allowances will be authorized on individual cases only upon application to the MMS. A new § 206.102(i)(2) was added in the draft final rules which established a two-part test for qualification for a cost allowance. First, only production from leases in unusually high-cost or frontier areas qualified. The only leases that qualified were those located north of the Arctic Circle or those OCS leases located in water depths in excess of 400 meters. Any leases that did not meet this first test could not apply for this allowance. However, even for leases that met this test, MMS would not grant an allowance unless the lessee demonstrated to MMS's satisfaction that the costs are, by reference to standard industry conditions and practice, deemed to be extraordinary, unusual, or unconventional. In some instances, MMS may have granted an allowance only to the extent that the extraordinary costs exceed conventional costs for the same operation.

MMS received many comments on this new section added to the draft final rules. State and some Indian commenters thought that this section was an unwarranted exception from the requirement that the lessee is obligated to bear the costs of placing oil in marketable condition or that further restrictions should be included, while one Indian commenter endorsed the principle introduced by this new section. Industry commenters generally thought that the new section was a step in the right direction, but thought that the dual qualification process was too rigid. They suggested that the extraordinary allowance be granted if a lessee could meet the requirements of either paragraphs (2)(i) or (2)(ii). Industry commenters also suggested that the reference to 400 meters be changed to 400 feet because that is the point at which costs begin to escalate significantly. They also thought that use of the term "unique" was inappropriate because it would limit the applicability to only the first lessee with a particular type of extraordinary operation. Some commenters also requested that once approved, the allowance should extend beyond one year.

MMS Response: MMS has retained the extraordinary cost allowance section with a few modifications. The section still requires that the lessee meet a two-part test, and the reference to 400 meters was retained. The term "unique" has been changed to "extraordinary" because it was not MMS's intent to limit the allowance to a one-of-a-kind operation. MMS has revised the provisions relating to the approval period so that MMS can now determine the approval period on a case-by-case basis.

Section 206.102(j) was proposed as § 206.102(i). There were several comments on this section from industry, States, and Indians. The majority of the comments were negative in some respect; only two commenters (one industry and one State) concurred with the proposed regulation as written. State and industry commenters recommended deleting the regulation in its entirety, indicating that the regulation is inappropriate in the context of oil sales because the majority of oil is sold under monthly posted prices and is not normally subject to contractual price escalations or increments. They suggested that the regulation is more appropriate to gas sales contracts and does not belong as an oil valuation standard.

MMS Response: Although the large majority of oil is sold under posted price bulletins, the division order, which sets forth the division of proceeds and is signed by all interest owners, is considered to constitute the "contract" for purposes of these regulations.

Several modifications, many taking issue with the "prudent operator" concept, were suggested as follows:

Two industry commenters suggested deleting the first sentence ("Value shall be based on the highest price a prudent operator can receive under its contract") because (1) it countermands the use of the actual proceeds benchmark system established in § 206.102 (b) and (c); and (2) the requirement of a lessee to obtain the highest theoretical price, regardless of the cost involved in obtaining that price, may contradict the definition of "prudent operator" found in the draft coal regulations at § 206.5(nn) and, therefore, ignores "the realities of the marketplace and the courthouse and unfairly precludes the lessee from exercising sound business judgment."

One industry commenter recommended revising the paragraph to conform to the reasonable value standard of § 206.102 generally. Here the commenter argued that the "highest price" standard of this subsection is in direct opposition to the reasonable value standards of previous subsections, thus causing the proposed rulemaking to be contradictory.

MMS Response: The MMS has modified the first sentence of the final rule to read "Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract." As noted in the preamble to the proposed rule, this section prescribes a diligence concept. As discussed above, with regard to the concept of gross proceeds "accruing" to a lessee, MMS requires a lessee to pay royalty on that value which it was entitled to get. These regulations reflect MMS's willingness generally to accept arm's-length contract prices as value, but there is a concomitant obligation on the part of the lessee to obtain all to which the lessee is entitled under its contract. If it fails to take such reasonable measures, MMS will assess royalty on the prices which reasonably could have been obtained in accordance with the contract.

One industry commenter suggested changing the fourth sentence to read "the lessee will owe no additional royalty *unless or* until monies are * * * received" in cases of disputed payments.

MMS Response: The MMS has adopted this suggested modification as consistent with its intent. However, this provision does not permit a lessee to avoid paying royalties where a purchaser has failed to pay, in whole or in part or timely, for a quantity of oil.

One State respondent suggested that an explicit provision for the assessment of interest for delayed payments should be added, with such a requirement being an equitable compromise for the lessor's agreement to delay enforcement of its rights to the timely payment of full royalties.

MMS Response: When a matter is being legally contested between the parties, and the lessee has taken appropriate legal action, MMS's policy is not to require payment of the amount in dispute until the lessee actually receives it. If a purchaser fails completely to pay for a volume of production, royalties still are due the month following the month of sale or other disposition. In all cases, interest is due if the royalties are paid late. However, in the case of disputed price increments, the royalties are not due until the end of the month following the month that the lessee receives them.

An Indian commenter also suggested that the last sentence should be clarified to make explicit that the bankruptcy of a purchaser of oil should not permit a lessee to avoid its royalty payment obligation.

MMS Response: The MMS believes that the language already encompasses a bankruptcy situation and recognizes that the lessee still has an obligation to pay its royalties.

Section 206.102(k) provides that no redetermination of value by MMS as the result of review, reconciliation, monitoring or a like process is final or binding against the lessor until the audit period is formally closed. MMS intends to issue additional guidelines as to when an audit period is closed.

Section 206.102(l) was proposed as § 206.102(j). Comments were received from three State and six Indian representatives objecting to the restrictive terms/effect of this paragraph. In general, the comments pointed out that the requirement to obtain valuation information through Freedom of Information Act (FOIA) requests would inhibit Indian Tribes, allottees, and States from gaining access to the information required to assure that valuations are properly determined. In particular, "The second sentence of the proposed regulation appears to be an unlawful effort to preclude the exercise of departmental discretion under FOIA to voluntarily release nonproprietary data to royalty owners on a case-by-case basis. The third sentence appears to prohibit tribes and allottees from requesting such information through the BIA." It was generally recommended that the paragraph should be clarified to indicate that all valuation information should be available to States, Indian Tribes, and allottees without going through FOIA procedures. (Two Indian commenters offered specific language that could be appended to the paragraph to clarify its intent regarding the sharing of information with authorized parties.)

MMS Response: The intent of this paragraph was not to preclude access allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are statutory restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessor or from MMS to the extent provided in lease terms or applicable law.

In the draft final rule, MMS changed the phrase "will be maintained" to "may be maintained." Many industry commenters were concerned that this change would allow MMS to release proprietary information. This was not MMS's intent, and to avoid any confusion the term "will" has been substituted for "may."

Section 206.103 Point of royalty settlement.

Several industry representatives and a few States commented on this section. The State commenters recommended that § 206.103 be strengthened by defining standards for establishing the

point of royalty settlement and thereby minimizing pipeline losses. Lease or unit boundaries were suggested as the point of royalty settlement for onshore production, and the entrance to the first onshore facility was suggested for OCS production.

MMS Response: These regulations pertain to the valuation of oil and are not concerned with the criteria for the point of royalty settlement. The point of royalty settlement is authorized by MMS operations offices for Federal OCS leases and by BLM for onshore Federal and Indian leases.

Two industry commenters addressed the clarity and intent of § 206.103(a)(2). One of these commenters pointed out that the reference to an adjustment for differences in quality and quantity (such as for basic sediment and water) was unclear, asking what adjustments would apply and how these would be made. The other commenter recommended deleting the paragraph altogether because only the quantity and quality actually measured at the point of royalty settlement should be used for royalty computations.

MMS Response: The paragraph cannot be deleted because there are situations, usually onshore, where the gross proceeds accruing to a lessee are based upon the quantity and quality of oil at a point that is different than the point of royalty settlement specified by BLM to be used in calculating Federal or Indian royalty, usually at the tank battery on the lease. In this situation, the quantity and quality criteria measured at the tank battery on the lease must be used to determine the proper value, which, because the quantity of oil at the contractual sales point is less, will be greater than the lessee's gross proceeds.

Many commenters from industry objected to the provision of § 206.103(b) disallowing actual or theoretical losses between the point of royalty settlement and the actual delivery point. They pointed out that pipeline losses are an integral part of transportation over which the lessees/operators have no control and thus should be an allowable component of transportation deductions. They also pointed out that disallowance of losses is contrary to the concept of accepting gross proceeds under arm's-length transactions because the lessor's royalty may be calculated on a different basis than what the lessee is paid by the purchaser.

MMS Response: The issue addressed here deals with volume and quality measurements upon which royalty must be based. The issue of line losses being included as a component of transportation deductions is addressed in the section of the regulations dealing with transportation (§§ 206.104 and 206.105).

One industry commenter suggested that § 206.103(b) be clarified regarding load oil, and recommended that the section be modified to specifically exclude load oil from royalty obligation.

MMS Response: The determination of whether load oil is considered to be royalty-bearing is a function of lease terms and the origin of the oil so used, and is generally the responsibility of the BLM and MMS OCS operations personnel for onshore and OCS leases, respectively. As such, no specific language was added to address this issue.

Section 206.104 Transportation allowances—general.

Comments on transportation allowances that did not relate to any specific section of the regulations were classified in the General section of the oil transportation regulations. Although there were comments on a wide variety of subjects, they have been grouped as follows: post-production costs, validity issues, adequacy/inadequacy issues, cost issues, Royalty-In-Kind (RIK) issues, and issues relating to the definition of terms.

Many commenters addressed the issue of whether MMS should allow lessees to deduct all post-production costs from royalty payments. Transportation costs are one type of post-production cost. MMS will not respond to that issue again in this section as it was fully addressed in the discussion of § 206.102(i). Moreover, because the final rules provide an allowance for transportation costs, it is unnecessary to consider whether such costs also are to be considered "post-production costs."

Many commenters addressed the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Six State and five Indian commenters stated that transportation allowances should not be granted unless necessary to sell the product or to promote development, or unless the transportation results in a higher royalty value. Six Indian and one State commenter stated that MMS should not grant any transportation allowances under any circumstances.

One Indian commenter stated that the regulations should not be allowed to change the lease terms. According to this commenter, the granting of transportation allowances is, in effect, a change to the lease terms.

Two Indian commenters stated that MMS must take into account its responsibility to Tribes and allottees in preparing the regulations and must determine the fairness and reasonableness of all transportation allowances.

One industry commenter stated that the reason that MMS grants allowances is because certain Interior Board of Land Appeals (IBLA) decisions required that transportation be considered when determining product value on which royalty is based. Another industry commenter stated that MMS should grant a transportation allowance even if the product value is determined at the lease, if the sales contract required the lessee to incur the expense of transporting the oil to the point of sale.

MMS Response: On the basis of decisions by the Interior Board of Land Appeals (IBLA), Solicitor's opinions, and judicial decisions, it has been longstanding MMS policy to grant transportation allowances when oil is transported to a sales point off the lease in order to calculate the value of the product at the lease. Furthermore, the IBLA has ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the regulations being adopted are consistent with past practice and are consistent with the Secretary's responsibility to the Indians. The MMS believes that royalty should be free of production and marketing costs. However, values may have to be adjusted for transportation and/or processing in determining value at the lease.

The MMS agrees that the proposed procedure for determining a transportation allowance places a great deal of reliance on the oil industry. However, this program will be under continuous review and oversight by MMS. There is nothing in the final oil transportation allowance regulations that would change the terms of any Indian lease. The MMS believes that the policy of granting transportation allowances is appropriate and should continue.

Another issue centered around the adequacy or inadequacy of the proposed oil transportation regulations in general. Some commenters believed that the regulations are completely flawed, while others pointed to specific instances where changes should be made to improve their specific applicability.

One industry commenter suggested that MMS should approve the use of contract prices which are net of transportation costs. Another industry commenter stated that the regulations should be revised to eliminate the alleged bias against frontier and deep-water areas. They also recommended the elimination of the ceiling on transportation allowances. Another industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements.

Two industry commenters stated that in their view the proposed regulations serve as a disincentive for companies to build and operate transportation facilities. One industry commenter stated that the oil transportation regulations should be revised to achieve certainty by adopting a more rational and realistic approach.

MMS Response: In response to comments received, MMS has changed the regulations to recognize that in arm's-length situations where the specified price is reduced by a transportation factor the lessee does not have to report the transportation factor as a transportation allowance. The MMS also recognizes that transportation costs for frontier and deep-water areas may be extraordinarily high and may exceed 50 percent of the value of oil. Because of this concern, MMS has adopted a provision in the final regulations to permit the transportation allowance to exceed the 50-percent limitation with approval from MMS. As the general rule, however, the transportation allowance authorized by the regulations may not exceed 50 percent of the value of the oil at the point of sale on the basis of a selling arrangement. The MMS has decided that pre-approval of all transportation allowances is not a cost-effective procedure. The 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance, based on reasonable actual costs, will exceed that limit.

The MMS received a number of comments relating to transportation allowances for RIK oil. Industry commenters stated that MMS should grant a transportation allowance for onshore RIK oil. Another industry commenter suggested that the regulations should clearly state that the lessee is not required to transport RIK oil from the lease. Other industry commenters stated that this section was in conflict with § 208.8 of the proposed RIK regulations.

MMS Response: The suggestion that MMS should grant a transportation allowance for onshore RIK oil was not adopted because the onshore lease terms provide that the in-kind oil will be made available to the lessor on the lease at no cost to the lessor. The MMS believes that there is no need to state explicitly that the lessee is not required to transport onshore RIK oil. Many of these issues will be addressed in MMS's revisions to the RIK regulations (See 52 FR 2202, January 20, 1987).

Another issue discussed by several commenters concerns the definition of terms used in the regulations. Several respondents commented on the use of the term "reasonable" to describe transportation costs. One State commenter recommended that the term "reasonable" was too vague and should be defined. Three industry commenters recommended that the term "reasonable" be deleted. Six commenters were concerned about the term "remote from the lease." Two Indian and two State respondents commented that the phrase "remote from the lease" should be defined. Two industry commenters stated that the phrase "remote from the lease" should be changed to "the first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance and includes the requirement that the transportation costs be necessary to market the oil. The MMS agrees that the phrase "remote from the lease" caused confusion and has replaced it with the phrase "off the lease."

The MMS received comments from a large number of respondents on § 206.104(b). This proposed regulation established a 50-percent limit on transportation allowances.

Most of the comments on this paragraph related to one major topic, the limitation of 50 percent on oil transportation allowances. Comments were also received on the proposal not to allow royalty payments to be reduced to zero. Comments on the 50-percent allowance issue were also divided between those commenters who wanted to retain the limit and add additional qualifications, those who wanted to raise the limit, and those who wanted to lower the limit.

Most industry commenters stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; the 50-percent limit could impose a serious economic deterrent to the exploration and development of frontier areas and could serve as a disincentive to the building of transportation systems; the limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; it would be a rare case when an oil transportation cost would come close to the proposed 50-percent cap, much less exceed it; the proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Industry commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee for the following reason: If the actual cost of transportation can be reasonably justified, it should be permitted if a lessee can adequately demonstrate that a higher allowance is in the best interest of the lessor.

One Indian commenter stated MMS should change the 50-percent limitation to a 20-percent limitation because the 50-percent limit is excessively high.

Industry and State commenters stated that MMS should clarify the exception criteria which would allow transportation allowances to exceed the 50-percent limitation. The proposed "best interest of the lessor" criteria was described as vague and unclear and could be interpreted to exclude all cases. Criteria for approval should allow a lessee to more objectively plan development of oil and gas prospects.

Several industry respondents stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. This procedure should be applied to all transportation systems, but it would be especially important in the frontier areas.

A State, a State/Tribal association, and a few industry commenters stated that MMS should retain the 50-percent limitation in the proposed regulations for the following reasons: The limit should apply in all cases with no distinction made between circumstances where transportation is a component of price and where transportation costs are incurred directly by the lessee; the 50-percent limit is acceptable as a guideline but MMS should freely exercise its authority to allow transportation costs in excess of 50 percent of the value of the lease product; the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

One industry respondent and one State commenter stated that royalty payments should not be reduced to zero. The State respondent commented that it is a privilege to use public lands and it should not be possible to take production from it royalty-free. Two industry respondents stated that royalty payments should be allowed to go to zero for marginal production and for cases where reservoir maintenance is a concern.

MMS Response: The MMS has decided generally that the 50-percent limitation should be retained in the final rule. The transportation allowance for oil is limited to 50 percent of the value of the oil on the basis of a selling arrangement. A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. In no event, however, can the transportation allowance exceed 100 percent of the value of the oil.

MMS received comments that a transportation allowance in excess of 50 percent should be allowed only when it is in the "best interests of the lessor." MMS did not include this standard because it is too subjective. The requirement that the costs be "reasonable, actual, and necessary" are sufficient to protect the lessor's interests.

The MMS received several comments from industry on § 206.104(c) which requires allocation of transportation costs among all products transported. One commenter stated that, for transportation allowances, MMS should allocate costs on the basis of relative value rather than on the basis of relative volume. Two commenters recommended that costs associated with the transportation of nonroyalty-bearing products (i.e., water) should be deductible. It was also stated that to the extent transportation for certain nonroyalty-bearing products cannot be avoided, the costs should be equally as deductible as the oil transportation. Four commenters recommended deleting the requirement that transportation costs must be allocated among all products for one or more of the following reasons: Allocation would be a labor-intensive process and an onerous burden inflicted upon reporting parties; allocation would be impractical because, in many instances, volumes are not available; and it would require significant additional effort to complete additional Forms MMS–4110.

MMS Response: The MMS has considered the comments regarding allocating costs on the basis of relative value. The MMS does not agree with the proposal that nonroyalty-bearing substances should have a transportation allowance. The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would not be difficult in most instances. Accordingly, MMS has retained the cost allocation on the basis of relative volume in the regulations. Section 206.104(d) has been retained in the final rule in the same form as proposed.

Section 206.105 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.*

Although there were comments on a wide variety of subjects, they have been grouped under nine issues as follows: Acceptance of FERC-approved tariffs and arm's-length transportation agreements, excessive penalty and retroactive approvals, MMS's approval of the transportation allowances, acceptance of transportation reduced prices, status of currently approved allowances, required filing every 12 months, allowance on non-royalty-bearing production, allocation of transportation costs, and period for filing a proposed allocation method.

(1) Acceptance of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Several industry commenters responded that the oil transportation allowance regulations should be written to support the use of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Indian commenters expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Indian commenter stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. Another Indian commenter expressed doubt that there can even be an arm's-length contract between companies in the oil industry. One Indian commenter stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. Another Indian respondent expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian commenter also stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length and non-arm's-length contract situations.

MMS Response: The MMS currently uses FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs. However, for non-arm's-length and no-contract situations, MMS generally will permit only the reasonable, actual expenses incurred by the lessee as the allowance. MMS is creating a limited exception to this policy, discussed below, in regard to § 206.105(b). MMS has added a sentence to § 206.105(a)(1) clarifying that the lessee has the burden of demonstrating that its contract is arm's-length.

MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to § 206.105(b). The first situation is where MMS determines that the trannsportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor.

(2) The disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110, Oil Transportation Allowance Report.

The MMS received responses from several industry respondents stating that the disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110 is an excessive penalty for what they consider to be a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4110 before the Form MMS–2014 is filed. However, one State commenter agreed with the proposed regulation disallowing the deduction for any period in which the Form MMS–4110 was not received.

Many industry commenters responded on this paragraph stating that the regulations should have a provision allowing retroactive transportation deductions. The general consensus was that a lessee does not always have the details on transportation worked out before production begins, and sometimes it is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing nature of current oil and gas markets.

MMS Response: The MMS considered the comments on retroactive requests and has revised the regulations, § 206.105 (a)(1) and (b)(1), to allow lessees to request transportation allowances retroactively for a period of not more than 3 months. Pursuant to § 206.105(d), if a lessee takes a deduction without complying with the regulations, interest only must be paid until the date that appropriate forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed owing to the limitation on retroactivity.

(3) Prior MMS approval of transportation allowances.

Industry respondents expressed approval of the self-implementing procedure in the transportation allowance regulations. This was regarded as a method of relieving a considerable administrative burden on both industry and MMS. One Indian commenter disagreed with the self-implementing nature of the regulations because it was regarded as a method of establishing the 50-percent limitation as a floor for transportation allowances.

State and Indian commenters stated that MMS should pre-approve all transportation allowances and should provide approval only on a showing of necessity to promote development or a showing that a higher value could be obtained for the oil at a point of sale away from the lease. It was also stated that neither the MMS nor the States and Indian Tribes have the resources to audit all leases and if these allowances are not monitored "up front" they will never be audited.

MMS Response: The MMS has determined that it is not necessary to pre-approve all transportation allowances. The MMS will monitor and review transportation allowances for regulatory compliance and reasonableness. Therefore, most allowances under § 206.105 (a) and (b) do not require prior MMS approval.

(4) Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations.

Industry commenters responded that MMS should accept transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations. This policy was regarded as reducing the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was regarded as a potential technique to exceed the 50-percent limitation provision of the regulation. One commenter stated that neither industry nor MMS could administer trucking-rate transportation allowances on the basis of lease-by-lease and, therefore, MMS will probably be forced to accept transportation-reduced values where trucking is involved.

MMS Response: MMS considered these comments and determined that § 206.105(a)(5) of the final rule should provide that transportation factors specified in arm's-length contracts are to be considered as reductions in value rather than transportation allowances. The use of Form MMS–4110 for the transportation factors is not required.

(5) Should current approved transportation allowances remain in effect until they expire?

Two industry commenters responded that it would be administratively easier if the regulations would allow a current approved transportation allowance to remain in effect until it expires. Seven industry commenters stated that the transportation allowance reported on Form MMS–4110 should continue until the applicable contract or rate terminates or is modified or amended. State commenters stated that owing to some allowances currently being taken without written MMS approval, only those lessees with documented approval should be allowed to continue without submission of the Form MMS–4110.

MMS Response: The MMS considered these comments and has revised the regulations at § 206.105 (c)(1)(v) and (c)(2)(v) to provide that transportation allowances in effect on the date these regulations become effective will be allowed to continue until they terminate, subject to audit. However, MMS is limiting this provision only to those allowances that have written approval from MMS. Because the regulations are being revised to remove any prior approval by MMS before a deduction can be taken, and the submission of Form MMS–4110 is to increase MMS's ability to monitor the allowances being taken, MMS believes that the intent of the final rules will be best served by requiring all allowances to be deducted under the new rules documented as of the effective date.

(6) Should MMS require the filing of Form MMS–4110 every 12 months?

Industry commenters stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred. Two industry commenters responded that there is no apparent reason for MMS requiring the filing of Form MMS–4110 every 12 months.

MMS Response: The MMS requires the filing of Form MMS–4110 on an annual basis for use in monitoring costs and volumes associated with a multi-million dollar transportation allowance program. The regulation is being adopted as proposed.

(7) Should MMS allow transportation allowances for production which is not royalty bearing?

An industry commenter recommended that a transportation allowance should include costs associated with moving water because some water is retained in pipeline oil. Another industry respondent recommended deletion of the last sentences of § 206.105 (a)(2) and (b)(3) which prohibit disallowances for transporting lease production which is not royalty-bearing.

MMS Response: It has never been MMS's policy to permit transportation allowances for production which is not royalty bearing. Historically, MMS's policy and practice has been to limit transportation allowance deductions only to the royalty-bearing portion of lease production transported.

(8) Allocation of a cost applicable to more than one product.

Two industry commenters stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on the basis of relative volume. One industry commenter suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

One State commenter suggested that MMS provide guidance on what will be an acceptable method of allocation in situations that involve the transportation of both gaseous and liquid products. One industry commenter suggested that the rules could be further enhanced by allowing for the adoption of an allocation procedure contained in a different arm's-length transportation contract where similar conditions and products exist.

MMS Response: The MMS determined that allocating costs on the basis of relative volume rather than on the basis of relative value is more equitable because of the wide variance in relative value between some products. The MMS will allow the lessee to propose an allocation procedure. It would be difficult for MMS to provide guidance on acceptable methods of allocation because of the many different situations involving the transportation of both gaseous and liquid products. The MMS believes that the most advantageous procedure is to have the lessee submit an allocation proposal to MMS in these situations. Thus, § 206.105 (a)(3) and (b)(4) require the lessee to submit such

an allocation proposal within prescribed timeframes.

(9) The MMS should extend the period to submit a proposed allocation method.

Two commenters stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload and burden, and a more reasonable provision of time would be 120 days. Others requested an even longer period.

MMS Response: The MMS determined that 3 months is a reasonable time period to submit a proposed allocation method and § 206.105 (a)(3) and (b)(4) have been revised accordingly.

(b) *Non-arm's length or no contract.*

The MMS received many comments on § 206.105(b), which applies to non-arm's-length or no contract transportation situations, from industry, industry trade groups, States, Indian Tribes, and a Federal agency. Most of the negative comments actually addressed § 206.104(a), and those comments generally expressed the belief that no transportation allowance of any kind should be granted by MMS.

The comments received on these paragraphs have been grouped into nine issues as follows: Acceptance of State or FERC tariffs, acceptance of comparable arm's-length contracts, use of a benchmark system, penalties, increase in estimated allowances, prior approval of allowances, allowable costs, rate of return, and retaining Alternatives 1 and 2 for return on capital.

(1) Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Industry commenters stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should "rightfully rely on the expertise of FERC and State agencies which set pipeline tariffs to determine fair and reasonable transportation charges." It was also stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS. One industry commenter stated that FERC tariffs should be accepted as an allowable deduction regardless of whether the transportation contract is arm's-length or non-arm's-length because the tariff represents the recognized value of the service.

One industry commenter stated that MMS should accept as a transportation allowance either a FERC tariff or the actual cost including a reasonable profit, whichever is higher. This would give the lessee an option that would be more fair than the single method prescribed by MMS.

Two industry commenters stated that MMS should require actual costs only when there was no pipeline or published tariff. The use of internal cost accounting to determine the value of a transportation allowance was believed to be at odds with the interests of the lessee.

MMS Response: The MMS has reviewed the FERC procedure for granting tariffs. After careful consideration, MMS has decided that, in most instances, for non-arm's-length or no contract situations, the fairest and best way to determine transportation allowances is to allow actual, reasonable costs plus, if appropriate, an acceptable cost for the lessee's undepreciated capital equipment. The MMS will recognize FERC tariffs as a valid cost in computing a transportation allowance only when it is an actual out-of-pocket expense pursuant to an arm's-length transportation contract. Existence of a FERC-approved tariff for a transportation system, however, is one of the requisite criteria for MMS to consider in granting an exception to the requirement to use actual costs for non-arm's-length or no contract situations. See discussion below.

(2) Should MMS accept comparable arm's-length contracts for determining transportation allowances?

Several industry respondents stated that MMS should accept comparable arm's-length contract costs as the transportation allowance. The costs incurred under comparable arm's-length contracts were described as the best indicator of the value of that service provided by the lessee in transporting oil to a market or to any other point where it could be sold.

MMS Response: It is MMS's past and present practice to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" may include costs such as Federal and State income taxes, or socioeconomic costs incurred by the lessee in order to obtain State or county land access such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base oil transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.105(b)(5) will provide a limited exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to the MMS for an exception and MMS may grant the exception only if: (1) The lessee has arm's-length contracts with other persons for transportation through the same transportation system; (2) the lessee has a FERC-approved tariff for the system; and (3) at least 50 percent of the annual throughput is transported under arm's-length transportation contracts. If the MMS grants the exception, then the lessee will use as its transportation allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts.

In the draft final rules, MMS had included as the third standard a requirement that the persons purchasing transportation from the lessee had an alternative to using the lessee's system. MMS received many comments from industry that this standard made the exception illusory because, in most instances, there is only one pipeline. MMS agreed and changed the third standard to the requirement that at least 50 percent of the lessee's annual throughput is transported under arm's-length transportation contracts.

(3) Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Many industry respondents stated that MMS should allow transportation deductions based on a benchmark system. These commenters suggested that MMS allow the lessee the market value of the transportation service on the basis of a benchmark system featuring arm's-length contracts and tariffs with cost accounting being used only as a last resort.

MMS Response: The MMS considered the benchmark valuation system featuring arm's-length contracts and FERC tariffs with cost accounting being used as a last resort. The MMS has not adopted this recommendation for the same reasons as cited in issue no. 2 above.

(4) Should a penalty be imposed for late submission of the Form MMS–4110?

An industry respondent commented that requiring lessees to file Forms MMS–4110 and MMS–2014 at the same time would impose an unfair penalty on lessees for being unable to complete Form MMS–4110 prior to the Form MMS–2014 reporting deadline and that there is no need to cancel all currently approved allowances. Two other industry commenters suggested that submittal of Form MMS–4110 be only on the basis of as-needed, pursuant to contract changes.

MMS Response: The MMS has reconsidered the reporting requirement that would deny the transportation allowance for those periods for which no Form MMS–4110 was filed. Pursuant to § 206.105(b)(1) of the final rules, a lessee may claim a transportation allowance retroactively for a period of 3 months from the first day of the month that the Form MMS–4110 is filed. However, if the lessee has taken an allowance before filing the form, it must pay interest from the date the allowance was taken until the form is filed. The lessee will also be required to repay the amount of any allowance which is disallowed owing to the 3-month limitation on retroactivity. See § 206.105(d). The proposal to retain all current allowances in effect until they expire was considered and it was decided that approved allowances (i.e., allowances approved in writing by MMS) in effect on the effective date of these rules will be allowed to continue in effect until they expire. See §§ 206.105(c)(1)(v) and 206.105(c)(2)(v).

(5) Should the estimated rate reported on Form MMS–4110 be allowed to increase over the prior period, if justified?

One industry commenter requested that the estimated rate be allowed to increase over the prior period, if justified. This respondent also recommended that the initial allowance be effective for a period greater or lesser than the 12 months to allow industry to convert to calendar-year reporting. This would ease the administrative burden. Another industry commenter questioned the cost effectiveness of the two-step submission of estimates and corrections. This commenter recommended that any adjustment, plus or minus, be made prospectively only.

MMS Response: The recommendation to allow an estimated rate to increase over the actual rate for the prior period, if justified, has been addressed in the final regulations. Pursuant to § 206.105(c)(2)(iii), the lessee may use an estimate higher or lower than the previous year's actual rate if the lessee believes it is appropriate when submitting Form MMS–4110. The recommendation to adjust the initial reporting period to allow industry to convert to a calendar-year basis has been considered and the regulations at § 260.105(c) have been revised to provide for calendar-year reporting.

(6) Should MMS require prior approval for allowances?

Industry respondents commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed. Two State commenters proposed that MMS should require prior approval on non-arm's-length contract or no-contract deductions for transportation because adequate audit resources are not available to audit the allowances, and it is very likely that many leases will never be audited. One Indian commenter proposed that MMS require prior approval and audit to prevent abuse in the claiming of depreciation and overhead costs.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered pre-approval and pre-audit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4110. Therefore, with limited exceptions, no prior approval of allowances will be required.

(7) Should costs other than reasonable actual costs be considered in calculating the transportation allowance?

A few industry respondents stated that MMS should revise the regulations to make an allowance for debt service and State and Federal income taxes. Three industry commenters recommended that MMS provide for a complete recovery of costs plus an acceptable profit for assuming the risks involved in undertaking the service function of transportation. One industry commenter recommended that MMS allow for administrative overhead beyond that which is directly associated with, or attributable to, the transportation system.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments. The proposal to extend the amount of overhead beyond that which is directly allocable or attributable to transportation is not acceptable. Administrative overhead or any other costs not directly associated with transportation are not allowed.

(8) What rate of return should be used to calculate return on depreciable investment?

Most industry respondents opposed the use of Moody's Aaa corporate bond rate as unrealistic and too low. One industry commenter stated that "There is no reason to equate pipeline risks with the highest rated, most secure debt rate." Two industry commenters stated that the proposed rate is very conservative and arbitrary and the general consensus of the parties was that the rate of return should be adequate to reflect the risks involved in the oil and gas business. Seven respondents stated that the Aaa rate is the absolute lowest borrowing rate available only to a few "blue chip" companies.

One industry respondent suggested four alternatives to Moody's Aaa bond rate: (1) Prime rate plus 5 percent; (2) one and one-half times the average 20-year treasury bill rate; (3) 150 percent of Moody's Aaa rate; or (4) the rate of return methodology adopted by FERC in Opinion No. 154–B. This industry commenter also stated that industry's position supports a rate of return plus additional points to reflect risk factors, and two other industry commenters suggested that the rate of return should include Federal income tax.

Several industry respondents recommended a rate of return based upon the cost of debt and equity financing. One party stated that "Assets are not financed by debt alone; equity financing must be included in the calculation of an actual and reasonable cost of capital * * *" and suggested a rate to account for equity financing and an alternative method for extraordinary circumstances based on the weighted-average cost of capital. Another industry commenter suggested that the proposed rate "* * * would not include any return on equity which is a significant portion of the capitalization of the pipeline." One industry commenter suggested "* * * a true rate of return for the risk involved and the cost of capital for both debt and equity." Another respondent suggested a rate based on "* * * both cost of credit and equity capital." One industry respondent stated that "Most firms receive funds from both debt and equity sources."

Two industry commenters proposed the prime rate plus 5 percent in accordance with the RMAC panel. Two industry respondents suggested the average 20-year Treasury Bill rate times 150 percent. Seven industry commenters recommended either the average 20-year Treasury Bill rate times 150 percent or the prime rate plus 5 percent as proposed by the Oil Valuation and Gas Valuation Panels, respectively. One industry respondent recommended the prime rate plus 7 percent. Another industry respondent suggested Moody's 20-year Baa rate plus 9 percent as an equitable rate of return. One industry

commenter preferred the Treasury Bill rate times 150 percent if MMS fixes the rate at the time of initial investment, or the prime rate plus 5 percent if MMS redetermines the rate yearly. Another industry respondent suggested a 23-percent pre-tax rate of return. One industry commenter suggested that a risk component of from 5 to 7 points above the Aaa rate be adopted.

Two industry commenters stated that the limitation on the rate of return serves as an economic disincentive for lessees to invest in high-risk ventures, such as the frontier areas. Three industry respondents commented that a lessee affiliated with the pipeline would be at a disadvantage under the proposed rate of return because it would not be competitive with other producers deducting a transportation allowance that includes risk factors.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to construct transportation facilities. The MMS has examined the use of the corporate bond rate very carefully and has concluded that such rates are representative of the loan rates on sums of money comparable to that expected for the construction of transportation facilities.

There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move oil that has already been discovered is a much different risk. The risk of default (financial risk) is considered in corporate bond rates. Considering the risks related to transportation systems, a rate of return that is based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, and Standard and Poor's bond rate. The rate of return used by FERC was not considered because MMS does not believe that the FERC's obligations in developing tariffs and those of MMS in developing transportation allowances are sufficiently similar to warrant the use of similar procedures.

The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.105(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments on this issue, including several comments on the draft final rule that the BBB bond rate is not much better than the first proposal, MMS intends, in the near future, to issue a notice of proposed rulemaking to reconsider the applicable rate of return for purposes of these regulations.

The MMS does not consider State and Federal income taxes as an appropriate expense that should be included in a transportation allowance and does not agree that the rate of return should be increased to allow for income tax liability.

(9) Should MMS retain the provisions of both Alternative 1 and Alternative 2?

Some industry respondents commented that MMS should retain both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv). One industry commenter recommended that both Alternatives 1 and 2 be included in any cost-based methodology for determination of a transportation allowance. Another industry commenter recommended that both alternatives be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments. Two industry respondents stated that MMS should retain Alternative 1. One industry commenter stated that it endorsed use of the first alternative because it gives lessees some latitude in choosing the depreciation method.

One industry respondent commented that MMS should not retain Alternative 2. The commenter stated that this alternative would encourage third parties to become involved in the pipeline business, in which case MMS would absorb the full market cost of transportation provided.

Several industry respondents commented that MMS should adopt Alternative 2 and apply it to all existing and future transportation facilities. One commenter stated that limiting Alternative 2 (return on initial capital investment) to new or newly acquired transportation systems is unsupported in the proposed rules and Alternative 2 should be available without the limitation imposed by the MMS. Two industry commenters stated that they presumed Alternative 2 has no limit on the deduction under this alternative. Both industry commenters stated that although Alternative 1 specifically states that a transportation system may be depreciated only once, there is no mention of such a cap on Alternative 2 and, therefore, it is presumed that this option has no limit. One industry commenter stated that it believed it was appropriate to include both Alternative 1 and Alternative 2 in any cost-based methodology for determination of a transportation allowance.

One industry respondent recommended that MMS permit the depreciation schedule to be adjusted to reflect additional capital investment of a subsequent purchaser because, if additional capital is invested, there is no double recoupment of capital investment.

Several industry commenters stated that MMS's proposal to disallow recapitalization is inequitable. One commenter stated that because this proposal would only recognize the original capital costs, the additional capital costs which may have been invested by the new owner may not be recovered.

Some industry respondents stated that although they agreed with the concept of allowing a rate of return on the transportation facilities, the application of the allowance is unfair insofar as a company using Alternative 1 (i.e., one with existing facilities) would only be receiving a return on investment for the undepreciated investment (or net book value).

Some industry respondents stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that because the intention is to provide the lessee with a rate of return for his invested capital he should not be penalized by a diminishing return caused by tying the return into a depreciation option.

Several industry commenters stated that MMS should allow a lessee to add estimated abandonment costs to its depreciable capital investment value. One industry commenter stated that although MMS has set out that the proposed regulations require recognition of salvage values, often the cost of abandonment exceeds any salvage value; consequently, it was suggested that the estimated cost of abandonment of the transportation system be included as an expense of operation to the lessee.

An industry commenter stated that a transportation system should be depreciated only once. The commenter suggested that the regulation state "A change in ownership of a transportation system shall not alter the depreciation

schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once."

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv) and concluded that both alternatives should be retained. However, under the final rule, § 206.105(b)(2)(iv), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay its share for the depreciation of a system transporting royalty-bearing oil only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The MMS has taken the position that because it does not participate in the profit or losses that could result from the sale of transportation facilities, no costs for dismantling and abandonment should be included in transportation allowances.

The final rules provide that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee may not be altered by a change in ownership.

(c) *Reporting requirements.*

The MMS received many comments from industry and Indians on the reporting requirements, § 206.105(c), in addition to the comments already discussed above. The two major issues of concern relating to the reporting requirements were (1) usage of Form MMS–4110, and (2) the terms of the allowance and reporting periods.

(1) Should MMS require the filing of Form MMS–4110?

Several industry and Indian commenters opposed the use of Form MMS–4110. One Indian commenter stated that there should be more monitoring of deductions taken from royalty and requested that MMS retain an approval process instead of the mere filing of Form MMS–4110. One industry commenter stated that Form MMS–2014 will show the transportation allowance taken and that Form MMS–4110 is unnecessary. Two industry commenters recommended the filing of an "Intent to Deduct Transportation." One industry commenter stated that the transportation costs under arm's-length contracts should be part of the value and Form MMS–4110 should be filed only for non-arm's-length transportation.

Many industry commenters stated that it would be burdensome to file a new Form MMS–4110 each time a trucking charge or similar net change occurred in a contract price. One industry commenter stated that price postings have been amended as often as three times per month. One industry commenter suggested that Addendum No. 15 be incorporated into the new regulations and expanded to include offshore leases. One industry commenter stated that the regulations are not clear about whether or not a Form MMS–4110 must be filed for prices net of transportation. This industry commenter also stated that in some situations the lessee may not know a price is being netted of transportation in time to file Form MMS–4110.

One Indian commenter stated that the information on Form MMS–4110 should be clear and uncomplicated and should be available to the Indians.

MMS Response: The MMS believes that Form MMS–4110 must be required in order for MMS to monitor the transportation allowance program. The MMS believes it can monitor the transportation allowance deductions more effectively than with the pre-approval of the allowances. The MMS has made the information on Form MMS–4110 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The information on these forms will be made available to the Indians upon proper request. The filing of a Form MMS–4110 equates to an "intent to deduct transportation." The transportation costs under an arm's-length contract are separate from the value determination under such a contract so a Form MMS–4110 should be filed for transportation costs determined under both arm's-length and non-arm's-length contracts.

In arm's-length situations where the purchaser is reducing the posted price for a transportation cost and the lessee is incurring no out-of-pocket expense, filing a Form MMS–4110 is unnecessary. In these situations, the point of sale is at the point the purchaser acquires the oil and because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the oil, the reduction of price for the transportation costs past the point of sale would be considered. Section 206.105(a)(5) of the final rule incorporates the necessary regulatory language.

(2) Term of the allowance periods and the timetable for reporting.

One industry commenter endorsed the 12-month term for both onshore and offshore leases. Another industry commenter strongly suggested that all transportation allowances based on cost accounting be determined on the basis of calendar-year reporting. This industry respondent also suggested that all existing transportation allowances based on cost accounting be extended until April 1, 1988, when data for the 1987 allowance would be submitted.

Other industry commenters opposed the termination of all current allowances and recommended continuing allowances in effect for a period of time beyond the effective date of the regulations to allow for smooth transition. The general consensus was that it would be an administrative burden to require the filing of Form MMS–4110 immediately upon passage of the rulemaking. In addition, two of these four industry respondents proposed that the transportation allowances remain in effect for an additional 90 days beyond the issuance date of the regulations. One of these commenters suggested filing new forms only when the current allowance expires.

One industry commenter recommended a grace period for filing all allowances. Another industry commenter proposed a 90-day filing period for new Forms MMS–4110 that are submitted for contract revisions.

MMS Response: The MMS concurs with a 12-month term and the final regulations, in § 206.105(c), have been changed to provide that a Form MMS–4110 will be filed by calendar year. The MMS considered extending current allowances and § 206.105 (c)(1)(v) and (c)(2)(v) now provide that certain allowances will continue in effect until they expire. These are limited to allowances approved in writing by MMS. In regard to a grace period for filing, the regulations have been revised to allow a grace period of 3 months for all non-arm's-length and no-contract situations. The regulations in § 206.105(c)(2)(iii) allow the lessee 3 months after the end of the previous reporting period to file the Form MMS–4110. Also, the final regulations at § 206.105 (a)(1) and (b)(1) have been revised to allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS. Therefore, even if the lessee is not able

to file the Form MMS–4110 timely, the lessee could file the Form MMS–4110 and claim the transportation allowance on a corrected Form MMS–2014 at a later date. The rules also have been modified to include in paragraphs (c)(i)(vi) and (c)(2)(vii) a provision to allow MMS to establish reporting requirements different from those specified in the rules where circumstances warrant.

(d) *Adjustments.*

Several industry respondents commented on § 206.105(e), which was proposed as § 206.105(d), and pertains to adjustments. Four principal issues were identified.

(1) Should MMS require retroactive adjustments to transportation allowances?

It was the general consensus in the comments that adjustments were a very large burden on both industry and the MMS and that some way should be found to eliminate the need for the many adjustments that result from differences between actual and estimated transportation allowances. Six industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would greatly relieve the administrative burden on MMS and industry. Three industry commenters recommended that actual data from one period be used as the allowance for the subsequent period, eliminating the need for adjustments. It was stated also that this procedure would relieve the burden on MMS and industry associated with the requirement to make adjustments to each account, each month, for each year.

MMS Response: To ease the burden resulting from the adjustments requirement, MMS has eliminated the need for many retroactive adjustments by accepting arm's-length-contract transportation costs when the lessee timely files the Form MMS–4110. For non-arm's-length and no-contract situations, MMS did not eliminate the need for adjustments between actual and estimated transportation allowances. The MMS considered alternatives such as (1) rolling forward differences into subsequent periods, or (2) using actual data from one period to be used as the next period's actual allowance, but determined that either procedure could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees.

(2) Should MMS require refunds to be requested under the refund procedure requirement of Section 10 of the Outer Continental Shelf (OCS) Lands Act?

An industry commenter stated that refunds for estimates tendered in excess of actual costs should not be judged as refunds of a payment of royalty under Section 10 of the OCS Lands Act, 43 U.S.C. 1339, because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. Two industry respondents emphasized that the requirement to submit written requests for refunds for under-deducted transportation costs in accordance with Section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden to industry and MMS. Two industry commenters stated that the current long review and audit process is now causing lessees to lose the time value of money in the refunds which are due the lessees under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful and the suggestion was made that MMS should consider transportation allowance adjustments to be exceptions to the refund requirements of section 10 of the OCS Lands Act. Overpayments would be recovered through line-item adjustments on Form MMS–2014.

Two industry commenters suggested that the submission of Form MMS–4110 should constitute the tolling of the 2-year statute of limitations period defined in Section 10 of the OCS Lands Act. These parties believed that this should be put in the regulations to avoid burdensome refund procedures.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is examining the issue and will provide guidance to lessees.

(3) Payment of interest.

Industry commenters stated that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized.

MMS Response: MMS has no legal authority to pay interest.

(e) *Actual or theoretical losses.*

The MMS received over 15 industry comments on § 206.105(f), which was proposed as § 206.105(e). All commenters basically stated that MMS should amend or delete this paragraph to allow actual or theoretical losses as a transportation cost.

Nine industry respondents stated that line losses are actual transportation costs which should be allowed by MMS. The basic premise of these comments was that all costs resulting from line losses should be deductible because, if MMS does not absorb its pro rata share of such transportation costs, an inequity results.

As a variation of this issue, eight industry commenters declared that only certain oil losses should be deductible from royalty. Other industry respondents commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One of these commenters stated that, if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff. In other words, the losses are part of the total cost of the transportation arrangement and should be deductible. Three industry commenters stated that MMS should allow those line losses not attributable to negligence. One of these commenters stated that a credit should be allowed for line losses not attributable to negligence and such change would conform to Section 308 of the FOGRMA, which specifies that a lessee is liable for royalty payments on oil and gas lost or wasted from a lease site when such loss or waste is because of negligence on the part of the operator of the lease.

One industry commenter stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. The MMS will include, as part of a transportation allowance under an arm's-length contract, amounts required to be paid in cash or in kind for line losses. However, because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length or no-contract situations. No change to the final rule was made.

(f) *Other transportation cost determinations.*

Only a few comments were received on § 206.105(g), which was proposed as § 206.105(f). This section allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back.

The major concern raised about this paragraph was the application of the transportation allowance regulations to a net-back valuation. Two industry commenters stated that the use of restrictive cost-based transportation

allowances is inequitable when the net-back valuation procedure is used and recommended that the section be reworded to recognize total "actual costs" incurred to move or improve the hydrocarbon for sale downstream.

MMS Response: The MMS has reviewed and analyzed the comments relating to the procedure for netting costs back to the lease to determine a value for royalty purposes. The MMS remains convinced that the cost-based allowance procedure for determining oil transportation allowances is appropriate for determining value under a net-back procedure.

Section 207.5 Contract and sales agreement retention.

Two comments were received regarding § 207.5 (formerly proposed as § 207.4), one from industry and one from a State. The State commenter suggested several modifications to clarify and insure that sufficient documentation on oil sales is maintained and made available to FOGRMA-authorized State auditors and other authorized personnel.

The industry commenter suggested that the regulations should limit the audit period, and thus the time for record retention, to six years. This would avoid "an unnecessary administrative burden" upon industry to maintain records for an indefinite period.

MMS Response: The MMS has modified the final rule to require lessees to maintain and make available all documents relevant to the valuation of production.

This subpart is not the appropriate place to address record retention requirements. The record retention provisions are found at § 212.51 (a) and (b).

Section 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

This section was proposed as § 202.101. The Bureau of Land Management (BLM) advised that "the redesignation into 43 CFR must be accomplished prior to finalization of the proposed MMS regulations under 30 CFR Part 202 because the well count regulations (43 CFR Part 3100) must be referenced in the new 30 CFR Part 202." The BLM recommended extensive changes in this part "regardless of whether these regulations remain under 30 CFR or are reassigned to 43 CFR."

MMS Response: No changes to the proposed section will be made in the final rule. However, because this regulation is the responsibility of the BLM, it is being redesignated as 43 CFR 3162.7–4. After redesignation, BLM may elect to make certain revisions. MMS has corrected typographical errors which appeared in the proposed rule.

V. Procedural Matters

Executive Order 12291

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian oil royalty valuation regulations; clarifies DOI oil royalty valuation and oil transportation allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of the implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Lessee reporting requirements will increase approximately $4 million. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.105, 207.5, and 210.54 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and assigned OMB Clearance Number 1010–0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 207

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date:

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Part 3160 are amended as follows:

TITLE 30—MINERAL RESOURCES

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C.

181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 202 is amended by revising the Part title and the titles of Subparts B, C, D, E, F, G, and H to read as follows:

PART 202—ROYALTIES

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§§ 202.100, 202.100, 202.101, 202.102 and 202.103 [Removed]

§§ 202.150, 202.151 and 202.152 [Redesignated as §§ 202.100, 202.53, 202.52]

4. Sections 202.100, 202.101, 202.102 and 202.103 under Subpart C are removed. Sections 202.150, 202.151 and 202.152 under Subpart D are redesignated as new §§ 202.100 under Subpart C, 202.53 and 202.52 under Subpart B, respectively, and Subpart D is reserved.

5. In Subpart B, add new § 202.51 and revise §§ 202.52 and 202.53 (formerly §§ 202.152 and 202.151, respectively) to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Sec.
202.51 Scope and definitions.
202.52 Royalties.
202.53 Minimum royalty.

§ 202.51 Scope and definitions.

(a) This part is applicable to Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma) and OCS sulfur leases.

(b) The definitions in Subparts C, D, and I of Part 206 of this Title are applicable to Subparts B, C, D, and I of this part.

§ 202.52 Royalties.

(a) Royalties on oil, gas, and OCS sulfur shall be at the royalty rate specified in the lease, unless the Secretary, pursuant to the provisions of the applicable mineral leasing laws, reduces, or in the case of OCS leases, reduces or eliminates, the royalty rate or net profit share set forth in the lease.

(b) For purposes of this subpart, the use of the term "royalty(ies)" includes the term "net profit share(s)".

§ 202.53 Minimum royalty.

For leases that provide for minimum royalty payments, the lessee shall pay the minimum royalty as specified in the lease.

6. 30 CFR Part 202, Subpart C, is amended by revising § 202.100 (formerly § 202.150) and by adding 202.101 to read as follows:

Subpart C—Federal and Indian Oil

Sec.
202.100 Royalty on oil.
202.101 Standards for reporting and paying royalties.

§ 202.100 Royalty on oil.

(a) Royalties due on oil production from leases subject to the requirements of this part, including condensate separated from gas without processing, shall be at the royalty rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to Part 206 of this title multiplied by the royalty rate in the lease.

(b)(1) All oil (except oil unavoidably lost or used on, or for the benefit of, the lease, including that oil used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease to which this part applies is subject to royalty.

(2) When oil is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of the appropriate agency or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty-free.

(3) Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that oil was avoidably lost or wasted from an onshore lease, or that oil was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that oil was avoidably lost or wasted from an offshore lease, then the value of that oil shall be determined in accordance with Part 206 of this title.

(d) If a lessee receives insurance compensation for unavoidably lost oil, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e) In those instances where the lessee of any lease committed to a federally approved unitization or communitization agreement does not actually take the proportionate share of the agreement production attributable to its lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement, nonetheless, is subject to the royalty payment and reporting requirements of this title. The value, for royalty purposes, of that production will be determined in accordance with Part 206 of this title. In applying the requirements of Part 206 of this title, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value, for royalty purposes, of that portion as though the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

§ 202.101 Standards for reporting and paying royalties.

Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F. When reporting oil volumes for royalty purposes, corrections must have been made for Basic Sediment and Water (BS&W) and other impurities. Reported American Petroleum Institute (API) oil gravities are to be those determined in accordance with standard industry procedures after correction to 60 °F.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 203 is amended by revising the titles of Subparts B, C, D, E, F, G, and H to read as follows:

Subpart B—Oil, Gas and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§ 203.100 [Removed]

§§ 203.150 and 203.200 [Redesignated as §§ 203.50 and 203.250]

4. Section § 203.100 under Subpart C is removed. Section 203.150 under Subpart D is redesignated as § 203.50 under Subpart B. Section 203.200 under Subpart E is redesignated as § 203.250 under Subpart F.

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 206 is amended by revising the titles of Subparts B, C, D, E, F, G, and H to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources

3. A new Subpart I is added to read.

Subpart I—OCS Sulfur—[Reserved]

§§ 206.300 and 206.301 [Redsignated as §§ 206.350 and 206.351]

4. Sections 206.300 and 206.301 under Subpart G are redesignated as new §§ 206.350 and 206.351 under new Subpart H, respectively.

§ 3162.7-4 [Redesignated as § 3167.7-5]

§ 206.103 [Removed]

§ 206.104 [Redesignated as § 3162.7-4]

5. 43 CFR 3162.7-4 is redesignated as § 3167.7-5. 30 CFR 206.103 is removed and 206.104 is redesignated as a new 43 CFR 3162.7-4.

6. 30 CFR Part 206, Subpart C, is amended by adding new §§ 206.103 and 206.104 and by revising §§ 206.100, 206.101, 206.102, and 206.105 to read as follows:

§ 206.100 Purpose and scope.

(a) This subpart is applicable to all oil production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). The purpose of this subpart is to establish the value of production, for royalty purposes, consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If the specific provisions of any statute, treaty, settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the statute, treaty, or lease provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

(e) Notwithstanding the provisions of this subpart, for any lease in which an Alaska Native Corporation has acquired an interest subject to section 14(9) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(9)). The value, for royalty purposes, of the proportionate share of production from that lease which corresponds to the Alaska Native Corporation's proportionate interest in the lease will be determined in accordance with the regulations, guidelines, and Notices to Lessees in effect at the time the Alaska Native Corporation acquired any proportionate interest therein, or for interests acquired after the effective date of these regulations, at the time the Alaska Native Corporation selected or designated such interests for conveyance under sections 12 and 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611 and 1613).

§ 206.101 Definitions.

For the purposes of this subpart:

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery off the lease, unit area, or communitized area, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement that has been arrived at in the market place between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 20 through 50 percent creates a presumption of control; and

(c) Ownership of less than 20 Percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of

royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gathering" means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM or MMS OCS operations personnel for onshore and offshore leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the oil. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to reimbursements, including, but not limited to, reimbursements for harboring or terminalling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payment or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price, or through reduced prices in later sales and which are made before production commences, become part of gross proceeds as of the time of first production. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Load oil" means any oil which has been used with respect to the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Marketing affiliate" means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of oil at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the oil and any extracted, processed, or manufactured products, or from the value of the oil or any extracted, processed, or manufactured products at the first point at which reasonable values for any such products may be determined by comparison to other sales of such products to ascertain value at the lease.

"Net profit share" (for applicable Federal and Indian lessees) means the specified share of the net profit from production of oil and gas as provided in the agreement.

"Oil" means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil. For purposes of royalty valuation, the term tar sands is defined separately from oil.

"Oil shale" means a kerogen-bearing rock (i.e., fossilized, insoluble, organic material). Separation of kerogen from oil shale may take place in situ or in surface retorts by various processes. The kerogen upon distillation will yield liquid and gaseous hydrocarbons.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Posted price" means the price specified in publicly available posted price bulletins, offshore or onshore terminal postings, or other price notices net of all adjustments for quality (e.g., API gravity, sulfur content, etc.) and location for oil in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Section 6 lease" means an OCS lease subject to Section 6 of the Outer Continental Shelf Lands Act, as amended; 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of oil are made. Selling arrangements are described by illustration in the MMS Royalty Management Program (Oil and Gas or Solid Minerals) Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of oil at a specified price over a fixed period, usually of short duration, which does not require a cancellation notice to terminate, and which does not normally contain an obligation, nor imply an intent, to continue in subsequent periods.

"Tar sands" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity greater than 10,000 centipoise at original reservoir temperature, or contains a hydrocarbonaceous material and is produced by mining or quarrying.

§ 206.102 Valuation standards.

(a)(1) The value of production, for royalty purposes, of oil from leases subject to this subpart shall be the value determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(2)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion, MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production, for royalty purposes, shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 barrel of the oil (starting from the bottom) is sold.

(b)(1)(i) The value of oil which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, oil which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the oil. If the contract does not reflect the total consideration, then the MMS may require that the oil sold pursuant to that contract be valued in accordance with paragraph (c) of this section.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between two contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the oil production be valued pursuant to the first applicable of paragraph (c)(2), (c)(3), (c)(4), or (c)(5) of this section. If the oil production is then valued pursuant to paragraph (c)(4) or (c)(5) of this section, the notification requirements of paragraph (e) of this section shall apply.

(2) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the oil.

(c) The value of oil production from leases subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area; provided, however, that those posted prices or oil sales contract prices are comparable to other contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of posted prices or oil sales contract prices, the following factors shall be considered: Price, duration, market or markets served, terms, quality of oil, volume, and other factors as may be appropriate to reflect the value of the oil. If the lessee makes arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month reported on Form MMS–2014 will be used;

(2) The arithmetic average of contemporaneous posted prices used in arm's-length transactions by persons other than the lessee for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area);

(3) The arithmetic average of other contemporaneous arm's-length contract prices for purchases or sales of significant quantities of like-quality oil in the same area or nearby areas;

(4) Prices received for arm's-length spot sales of significant quantities of like-quality oil from the same field (or, if necessary to obtain a reasonable sample, from the same area), and other relevant matters, including information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of oil;

(5) A net-back method or any other reasonable method to determine value;

(6) For purposes of this paragraph, the term lessee includes the lessee's designated purchasing agent, and the term contemporaneous means postings or contract prices in effect at the time the royalty obligation is incurred.

(d) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality

production sold, purchased, or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined value pursuant to paragraphs (c)(4) or (c)(5) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(4) or (c)(5) of this section and each time there is a change from one to the other of these two methods.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on the difference computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that value for royalty payment purposes until MMS issues a value determination. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production, for royalty purposes, be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i)(1) The lessee is required to place oil in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

(2) If the lessee incurs extraordinary costs for the gathering, desulfurization, or storage of oil from frontier or deep water areas, and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, or the costs are associated with offshore leases located in water depths in excess of 400 meters; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS in a form and manner prescribed by MMS. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of oil.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information to which such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.103 Point of royalty settlement.

(a)(1) Royalties shall be computed on the quantity and quality of oil as measured at the point of settlement approved by BLM or MMS for onshore and offshore leases, respectively.

(2) If the value of oil determined pursuant to § 206.102 of this subpart is based upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement approved by the BLM for onshore leases or the MMS for offshore leases, the value shall be adjusted for those differences in quantity and/or quality.

(b) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such actual loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement.

There can be no reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this part. There can be no deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement.

§ 206.104 Transportation allowances—general.

(a) Where the value of oil has been determined pursuant to § 206.102 of this subpart at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to:

(1) Transport oil from an onshore lease to the point off the lease; provided, however, that for onshore leases, no transportation allowance will be granted for transporting oil taken as Royalty-In-Kind (RIK); or

(2) Transport oil from an offshore lease to the point off the lease; provided, however, that for oil taken as RIK, a transportation allowance shall be provided for the reasonable actual costs incurred to transport that oil to the delivery point specified in the contract between the RIK oil purchaser and the Federal Government or Indian lessor.

(b)(1) Except as provided in paragraph (a)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the oil at the point of sale as determined pursuant to § 206.102 of this subpart. Transportation costs cannot be transferred between selling arrangements or to other products.

(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value, for royalty purposes, under any selling arrangement, be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported. However, no transportation deduction shall be allowed for products which are not royalty-bearing. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.105 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(2) If an arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (including water) to the volume of all liquid products. No allowance may be taken for the costs of transporting lease production which is not royalty-bearing.

(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. No allowance may be taken for the costs of transporting lease production which is not royalty-bearing.

(4) Where the lessee's payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price, or a posted price, includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. No additional transportation allowance will be granted in such circumstances.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the

transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services or on a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after [*enter the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c) of this section).

(3) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (including water) to the volume of all liquid products and such allocation shall be made in a consistent and equitable manner. The lessee may not take an allowance for transporting lease production which is not royalty-bearing.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance on the basis of the lessee's proposal and any additional information MMS deems necessary. The lessee may not take an allowance for transporting a product which is not royalty-bearing.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS may grant the exception only if: (i) The lessee has arm's-length contracts for transportation of other production through the same transportation system; (ii) the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission; and (iii) at least 50 percent of the oil transported annually through the lessee's transportation system is transported pursuant to arm's-length transportation contracts. If the MMS grants the exception, the lessee shall use as its transportation allowance the volume-weighted average prices it charges other persons pursuant to arm's-length contracts for transportation through the same transportation system.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110, Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, pursuant to an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or

rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.* (i) With the exception of transportation allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until transportation under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. The estimated oil transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no-contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) The MMS may establish reporting dates for individual lessees different from those specified in this subpart in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and for failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting production from Federal OCS leases, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than its actual costs, the refund procedure will be specified by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

Part 207 is revised to read as follows:

PART 207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

Subpart A—General Provisions

Sec.

Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 207.1 Required recordkeeping.

The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned OMB Clearance Number 1010–0061.

§ 207.2 Definitions.

The definitions in Part 206 of this title are applicable to this part.

§ 207.3 Contracts made pursuant to new form leases.

On November 29, 1950 (15 FR 8585), a new lease form was adopted (Form 4–1158, 15 FR 8585) containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining prior approval of the United States as lessor, but must be retained as provided in § 207.5 of this subpart.

§ 207.4 Contracts made pursuant to old form leases.

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior, or by the Director of the Minerals Management Service or his/her representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contract or agreement contains either the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows:

It is hereby understood and agreed that nothing in the written contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas valuation regulations applicable to the lands covered by said contract.

§ 207.5 Contract and sales agreement retention.

Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized MMS, State or Indian representatives, other MMS or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to MMS within a reasonable period of time, as determined by MMS. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR Part 212.

Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 210 is amended by revising the titles of Subparts B, C, D, E, F, and G to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur—General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

3. The following subparts are added to Part 210:

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur—[Reserved]

§§ 210.100, 210.101, 210.102, 210.103, 210.104, 210.105, 210.150 and 210.151 [Removed]

§§ 210.300 and 210.301 [Redesignated as §§ 210.350 and 210.351]

4. Sections 210.100, 210.101, 210.102, 210.103, 210.104 and 210.105 under Subpart C and Sections 210.150 and 210.151 under Subpart D are removed. Sections 210.300 and 210.301 under Subpart F are redesignated as new §§ 210.350 and 210.351, respectively, under new Subpart H.

5. 30 CFR Part 210, Subpart B, is amended by adding § 210.54 to read as follows:

§ 210.54 Special forms or reports.

When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by MMS.

PART 241—PENALTIES

1. The authority citation for Part 241 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 241 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart H—[Removed]

3. "Subpart H—Indian Lands—[Reserved]" is removed.

Subparts E, F, and G [Redesignated as Subparts F, G, and H]

4. Subparts E, F, and G are redesignated as Subparts F, G, and H, respectively.

5. A new Subpart I is added to read "Subpart I—OCS Sulfur [Reserved]."

Subpart I—OCS Sulfur [Reserved]

6. A new Subpart E is added to read "Subpart E—Solid Minerals, General—[Reserved]."

Subpart E—Solid Minerals, General [Reserved]

§ 241.10 [Removed and Reserved]

7. Section 241.10 is removed and reserved.

§ 241.50 [Amended]

8. Section 241.50 is amended by removing the phrase "this subpart" and replacing it with the phrase "Subparts B, C and D of this part."

§ 241.100 [Redesignated as § 241.53]

9. Section 241.100 under Subpart C is redesignated as a new § 241.53 under Subpart B and retitled "Assessments for nonperformance."

§ 241.53 [Amended]

10. Paragraph (c) from newly redesignated § 241.53 is removed.

TITLE 43—PUBLIC LANDS: INTERIOR

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 298a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. section 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471) *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983) under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

§ 3162.7–4 [Redesignated as § 3162.7–5]

2. Section 3162.7–4 is redesignated as a new § 3162.7–5 and newly redesignated § 3162.7–4 is revised to read as follows:

§ 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The BLM authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The BLM authorized officer will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the BLM authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month, in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the BLM authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on the basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the BLM authorized officer as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No. and record	Count (Marked X)
1. Produced full time for 30 days	X
2. Produced for 26 days; down 4 days for repairs	X
3. Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 26, 24 hours, pulling rods and tubing	X
4. Produced for 12 days; down June 13 to 30	
5. Produced for 8 hours every day (head well)	X
6. Idle producer (not operated)	
7. New well, completed June 17; produced for 14 days	X
8. New Well, completed June 22; produced for 9 days	

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

[FR Doc. 87-24480 Filed 10-22-87; 8:45 am]
BILLING CODE 4310-MR-M

Federal Register

Friday
October 23, 1987

Part V

Department of Education

34 CFR Part 668

Institutional Quality Control Pilot Project; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 668

Institutional Quality Control Pilot Project; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations to exempt from selected verification requirements for the 1988–89, 1989–90, and 1990–91 award years, institutions selected by the Secretary to participate in the Institutional Quality Control Pilot Project (Pilot Project).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. These regulations apply to award years beginning on or after July 1, 1988. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Steve Zwillinger, Chief, Verification Development Section, or Karen Green, Program Analyst, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW., [Regional Office Building 3, Room 4613], Washington, DC 20202. Telephone Number (202) 472–6200.

SUPPLEMENTARY INFORMATION: The Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan programs. Using basic quality control components, an institution participating in the Pilot Project will be able to develop procedures tailored to meet the particular problems it faces in determining the appropriate amount of assistance from these programs and in disbursing those funds to students in a timely manner.

The Secretary is extending the Pilot Project to collect additional information on the quality control (QC) process, methodology, and findings over a longer period of time. The additional time and information will allow the Secretary to more accurately assess institutional management practices, measure errors related to the awarding of assistance from the above programs, and implement corrective actions to prevent such errors. The first year of the Pilot Project tested and refined the QC methodology and determined that it could be implemented at the institutional level. Additional information is needed on the effectiveness of the methodology in reducing institutional error.

The Secretary selects institutions to participate in the Pilot Project on the basis of selection criteria published in the **Federal Register**. Final selection criteria and regulations for the Pilot Project were published in the **Federal Register** on December 1, 1986, 51 FR 43332–43335. The Secretary is republishing the selection criteria and deadline date for participation in the Pilot Project with minor changes as a Notice of Deadline Date for Participation in the Institutional Quality Control Pilot Project and Updating of Selection Criteria in this issue of the **Federal Register**.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the changes establish no new substantive policy other than extension of an existing exemption. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking on these regulations is unnecessary and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations merely extend an existing exemption which was previously determined not to have any significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

Dated: October 2, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program; Number 84.032, Guaranteed Student Loan Program; Number 84.033, College Work-Study Program; Number 84.038, Perkins Loan Program; Number 84.063, Pell Grant Program)

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

§ 668.51 [Amended]

2. In § 668.51(c)(1), "and 1987–88" is revised to read "through 1990–91".

[FR Doc. 87–24590 Filed 10–22–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Institutional Quality Control Pilot Project; Grants

AGENCY: Department of Education.

ACTION: Notice of deadline date for participation in the institutional quality control pilot project and updating of selection criteria.

SUMMARY: The Secretary issues a deadline date for the submission of a written notice by an institution that it wishes to participate in the Institutional Quality Control Pilot Project (Pilot Project). The criteria used to select institutions for the Pilot Project were published in the **Federal Register** of December 1, 1986, 51 FR 43334–43335. However, the Secretary is updating certain information contained in those selection criteria.

The Pilot Project is an experiment under which a paticipating institution develops and implements a quality control system in connection with its administration of the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan programs.

EFFECTIVE DATE: These selection criteria become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these criteria, call or write the Department of Education contact person.

Deadline date for request to participate in pilot project: There are no formal ED application forms that must be used to apply to participate in the Pilot Project. An institution applies to participate in the Pilot Project by sending a written notice to the Secretary of its request to participate. An institution must submit its request to participate in the Pilot Project by November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Jerry Whitlock, Division of Quality Assurance, U.S. Department of Education, 400 Maryland Avenue, SW., [Regional Office Building 3, Room 5042], Washington, DC 20202. Telephone Number (202) 732–4422.

SUPPLEMENTARY INFORMATION: The Secretary is extending the Pilot Project to run through the end of the 1990–91 award year. An institution that is selected to participate in the Pilot Project is exempt, for the period of its participation in the Pilot Project, from selected requirements set forth in the verification regulations of Subpart E of the Student Assistance General Provisions, 34 CFR Part 668. In this issue of the **Federal Register** the Secretary is amending § 668.51 of the Student Assistance General Provisions regulations to exempt, for the 1988–89, 1989–90, and 1990–91 award years, institutions participating in the Pilot Project from selected verification requirements.

The Secretary published final selection criteria for participation in the Pilot Project in the **Federal Register** of December 1, 1986, 51 FR 43334–43335. When the Secretary published the final selection criteria he indicated that to administer the Pilot Project properly, the number of institutions participating in the Pilot Project should not exceed 102. Currently there are 50 institutions participating in the Pilot Project; therefore, if all 50 of the current participants choose to remain in the Pilot Project, the Secretary will select no more than 52 new institutions.

The selection criteria indicated that selected institutions should have experience in the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan programs and in dealing with a significant number of students and Federal dollars in all those programs. Accordingly, the selection criteria required that an institution be a participant in the above programs during the current award year (the 1986–87 award year) and have participated in all five programs during the preceeding two award years (the 1984–85 and 1985–86 award years).

The Secretary is keeping those criteria but updating the award years. Therefore, for institutions that wish to participate in the Pilot Project for the first time during the 1988–89 award year, they must be participating in the five programs during the 1987–88 award year, and have participated in all five programs during the 1985–86 and 1986–87 award years.

The Secretary is only republishing selection criteria I and II. The Secretary will select all institutions that meet the selection criteria unless more than 52 institutions apply. In the event that more than 52 institutions apply to participate in the Pilot Project, the Secretary will select those applicants on the basis of additional criteria published under final selection criterion III in the **Federal Register** of December 1, 1986.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. However, the changes to the criteria are technical in nature and establish no new substantive policy. Therefore, pursuant to 5 U.S.C. 553 (b)(B) the Secretary finds that publication of proposed selection criteria is unnecessary and contrary to the public interest.

Final Selection Criteria I and II

I. In order to be selected to participate in the Pilot Project, an institution must—

1. Participate in the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study and Supplemental Educational Opportunity Grant] and GSL programs during the 1987–88 award year and have participated in all five programs during the 1985–86 and 1986–87 as awards years;

2. Have had, in the aggregate, at least 2000 Pell Grant and campus-based program recipients during the 1985–86 year;

3. Have awarded, in the aggregate, at least $2 million under the Pell Grant and campus-based programs in the 1985–86 award year; and

4. Have submitted and had approved by ED its most recent audit report in which the reported liability was less than $150,000.

II. If not more than 52 applicants meet the above criteria, the Secretary selects all the applicants who meet the criteria to participate in the Pilot Project.

(Catalog of Federal Domestic Assistance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program; Number 84.032, Guaranteed Student Loan Program; Number 84.033, College Work-Study Program; Number 84.038, Perkins Loan Program; Number 84.063, Pell Grant Program.)

Authority: 20 U.S.C. 1070 *et seq.*

Dated: October 2, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–24591 Filed 10–22–87; 8:45 am]

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Federal Register

Friday
October 23, 1987

Part VI

Department of Education

34 CFR Part 696

Special Treatment of Institutions of Higher Education Located in Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 696

Special Treatment of Institutions of Higher Education Located in Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Secretary's May, 1982 Report entitled "Postsecondary Education in the U.S. Territories" and section 1204(a) of the Higher Education Act of 1965, as amended (HEA). The Report recommended methods by which programs authorized under the HEA could be adapted to meet the needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

DATE: Comments must be received on or before November 23, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Leo Paszkiewicz, Office of Policy Development, Office of Postsecondary Education, U.S. Department of Education (Room 4060, ROB-3), 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Leo Paszkiewicz, (202) 732-3551.

SUPPLEMENTARY INFORMATION: Under section 1204 of the HEA prior to its amendment by the Higher Education Amendments of 1986, Pub. L. 99-498, the Secretary was charged with conducting a study and reporting to Congress on the unique educational needs of Guam, the Virgin Islands, and the Northern Mariana Islands. Part of the study dealt with ways in which the programs authorized under the HEA could be adapted to meet the unique educational needs of those areas. The Secretary performed that study and issue a report in May, 1982, entitled "Postsecondary Education in the U.S. Territories."

Under section 1204(b) of the HEA as amended by the Higher Education Amendments of 1986, the Secretary is required to issue regulations that implement the recommendations in the report with regard to adapting HEA Programs to the needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

The May. 1982 report recommended higher education block grants for the territories, consolidation of higher education grants, a new categorical grant program which would authorize development grants for territorial colleges, the provision of additional program funding, funding set-asides, and waivers of matching requirements. Most of the recommendations in the report are not explicitly authorized by the HEA program statute.

However, two of the report's recommendations, the provision of waiver of program eligibility requirements and priority consideration for applications for program funds, were incorporated in the revisions to section 1204(a) made by the Higher Education Amendments of 1986. Specifically, section 1204(a) of the HEA as amended by the Higher Education Amendments of 1986 required the Secretary to waive eligibility criteria of any postsecondary education program that does not take into account the unique circumstances of Guam, the Virgin Islands and the Northern Mariana Islands, and to give priority to proposals submitted by institutions located in these territories.

These proposed regulations described how the Secretary will implement the new provisions for waivers and priorities for territories required in section 1204(a). These regulations will also serve to satisfy the statutory requirement in section 1204(b) which calls for the promulgation of regulations to implement the recommendations of the report entitled "Postsecondary Education in the U.S. Territories".

The proposed regulations identify the programs for which the Secretary will waive certain program eligibility requirements and describe how the Secretary will give priority to applications from the territories.

Priority treatment and waiver of eligibility requirements are procedures which have been used by the Secretary in the past to address the unique needs of the territories. The current Memoranda of Understanding between the Secretary and the governments of the various territories provide for both priority and waiver of certain eligibility requirements for the territories for a number of programs. These modifications have made it possible for institutions of higher education located in the territories to gain access to and funding from numerous higher education programs over the past several years.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established under the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations would serve to improve the likelihood of a small number of institutions of higher education located in the U.S. Territories receiving discretionary grant assistance.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period, in Room 4060, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal Holidays.

List of Subjects in 34 CFR Part 696

Education, Institution of Higher Education, Priority treatment, Waiver.

(Catalog of Federal Domestic Assistance number does not apply)

Dated: October 8, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 696 to read as follows:

PART 696—SPECIAL TREATMENT OF INSTITUTIONS OF HIGHER EDUCATION LOCATED IN GUAM, AMERICAN SAMOA, THE VIRGIN ISLANDS, THE TRUST TERRITORY OF THE PACIFIC ISLANDS, AND THE NORTHERN MARIANA ISLANDS

Sec.

Authority: 20 U.S.C. 1144a, unless otherwise noted.

§ 696.1 What is the scope of the regulations?

(a) This part establishes special rules that the Secretary uses in awarding financial assistance to institutions of higher education located in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands under programs authorized by the Higher Education Act of 1965, as amended (HEA), that are listed in § 696.2.

(b) As used in this part, an institution of higher education means an

educational institution as defined in section 1201(a) of the HEA.

(Authority: 20 U.S.C. 1141, 1144a)

§ 696.2 What programs are covered by this part?

These regulations apply to the following discretionary grant and loan programs authorized by the HEA:

Title II	College Library Resources Program (34 CFR Part 773).
	Library Career Training Program (34 CFR Part 776).
	Library Research and Demonstration Program (34 CFR Part 777).
	Strengthening Research Library Resources Program (34 CFR Part 778).
Title III	Strengthening Institutions Program (34 CFR Part 607).
	Endowment Challenge Grant Program (34 CFR Part 628).
Title IV	Talent Search Program (34 CFR Part 643).
	Educational Opportunity Centers Program (34 CFR Part 644).
	Upward Bound Program (34 CFR Part 645).
	Student Support Services Program (34 CFR Part 646).
	Training Program for Special Programs Staff and Leadership Personnel (34 CFR 642).
Title VI	National Resource Centers Program for Language and Area or Language and International Studies (34 CFR Part 656).
	Undergraduate International Studies and Foreign Language Program (34 CFR Part 658).
	International Research and Studies Program (34 CFR Part 660).
	Business and International Education Program (34 CFR Part 661).
	Language Resource Centers (34 CFR 669).
Title VII	Grants for Construction, Reconstruction, and Renovation of Graduate Academic Facilities (34 CFR Part 617).
	Housing and Other Educational Facilities Loans (34 CFR Part 614).
Title VIII	Cooperative Education (34 CFR Part 631).
Title IX	Law School Clinical Experience Programs (34 CFR Part 639).
	Patricia Roberts Harris Fellowships (34 CFR Part 649).
Title X	Fund for the Improvement of Postsecondary Education (34 CFR Part 630).
	Minority Science and Engineering Improvement Programs (34 CFR Part 637).
Title XI	Partnerships for Economic Developments.

§ 696.3 What are the special funding rules?

(a) The Secretary waives any eligibility criterion of any program listed under § 696.2, if that criterion does not take into account the unique circumstances in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(b)(1) If the award process for a program listed in § 696.2 uses weighted selection criteria, the Secretary awards additional funding points to an institution of higher education located in an area designated in paragraph (a) of this section that has applied for assistance under that program.

(2) The additional funding points equal ten percent of the points the institution's application otherwise received during the application review process.

(Authority: 20 U.S.C. 1144a)

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S. 1574/Pub. L. 100-137

To combine the Senators' Clerk Hire Allowance Account and the Senators' Official Office Expense Account into a combined single account to be known as the "Senators' Official Personnel and Office Expense Account", and for other purposes. (Oct. 21, 1987; 101 Stat. 814; 6 pages) Price: $1.00